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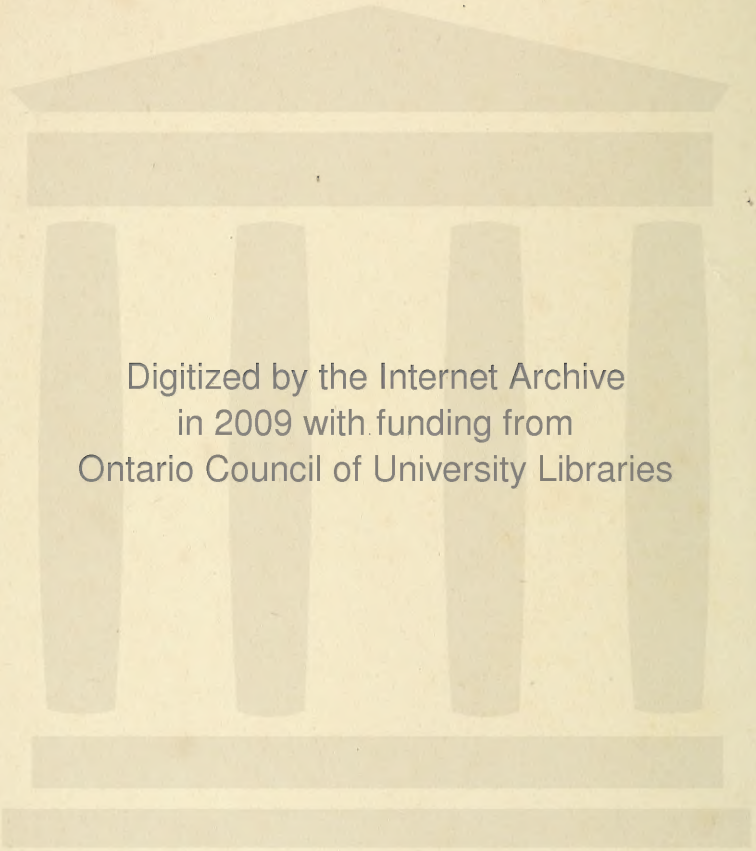
The Laws of Business

Third Edition



The Laws of Business

With Forms of Common Business and Legal Documents

For the use Students in Business Colleges, Collegiate Institutes and High Schools and as a book of reference for Business Men, Farmers, Mechanics and Professional Men.

BY

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OWEN SOUND
FLEMING PRINTING HOUSE
1903

PREFACE

In the compilation of the following pages the writer has endeavoured to present to the reader in a concise and practical manner, the leading principles of law as it relates to business, avoiding as much as possible the technical terms with which the subject is usually invested. The primary idea in writing this work was to supply students in Business Colleges, Collegiate Institutes and High Schools, with a suitable text book on the important subject of commercial law, and to place in their hands the forms of legal commercial papers more generally used by business men daily, in their transactions. It will be found a useful book of reference for business men, farmers, mechanics and others, both as to the laws of trade and in furnishing suitable legal forms and directions for drawing and using them.

It is neither the desire nor the expectation of the author to make "every man his own lawyer," but it is his aim to give him directions so that he may be able to protect his own interests and to enable him to transact business in an intelligent manner. The author does not claim originality in his subject—the principals of law are old, and scattered through the law books and the Acts of Parliaments for Ages. He does claim originality in many cases in his methods of arrangement, resulting principaly from many years of class-room work on this subject. The author asked an intimate acquaintance in business circles who had looked over advance sheets of the work, "To which chapter shall I especially refer my readers in the preface to the work?" His reply was, "Refer them to chapter 18, on Indorsements." This, and all the other chapters are recomended to the reader for more than a perusal—for a study that they may prove valuable to him as a part of his mental stock-in-trade always ready to be drawn upon in case of need, but neither reduced nor expended by usage.

The author desires to acknowledge his indebtedness to His Honor Judge Creasor for the many useful and valuable hints gathered from his courses of lectures, and to John Armstrong, B. A., Q. C., for assistance in preparing this volume.

THIRD EDITION
Jan. 21, 1903.

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- Common Law.
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- Property.
- Real Property.
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1. **Municipal Law,** in its widest sense, comprises all those rules, written or traditionary, which have been laid down for the guidance of the community and to which its members must conform, if they would avoid penal consequences or civil liabilities.

Justinian States the doctrine of law in three principles, viz:—

(1) To live honestly ;

(2) To hurt nobody ;

(3) To render to everyone his just due.

2. **Sources of Law.**—In the British Empire, the theory is that the Sovereign is the source of all law. The practice is, however, quite different. The people themselves are really the source of the laws, as they are made by the representatives of the people in Parliament. It is true, however, that final assent has to be given by the Sovereign, either personally or by a representative, such as a Colonial Governor, before these laws, made by the people's representatives, really become authority. This assent has not been withheld for hundreds of years by the Sovereign, except on advice of the people's representatives, expressed through the Prime Minister for the time being. It is generally understood that it is beyond the power of the Sovereign to exercise a personal veto power against any law demanded by the people through their representatives.

In the United States, the law is made by the people, both in theory and practice, as they elect not only the houses of representatives but the President as well. —These laws are enacted by,

(1) Congress ;

(2) State Legislatures.

The bodies of representatives in the British Empire are :

(1) Imperial Parliament;

(2) Colonial Parliaments, such as that of the Dominion of Canada;

(3) Provincial Legislatures, such as that of the Province of Ontario.

3. Common Law includes those principles, usages and rules of action applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the Legislature. It consists mainly of *Customs*, which being practised from time inmemorial, have been gradually adopted and have received from time to time the sanction of the courts of justice, without any act of the legislature.

4. Statute Law is such that has been actually put into the form of written law by act of Parliament, Congress or Legislature. These acts of Parliament are called Written Law in contradistinction to the Common or Unwritten Law.

The duty of interpreting the Statute Law devolves upon the courts of justice in accordance with certain recognized rules.

5. Other Divisions.—The Common and Statute Law is divided according to what it applies to, into

MERCANTILE LAW;
MARINE LAW;
CONSTITUTIONAL LAW, &c.

6. The Law Merchant is a branch of the Common Law. It consists of the law *deduced* from the practice and customs of merchants, subsequently aided and regulated by decisions of the Courts and by legislative enactments.

7. Uniformity of Laws.—The laws of all English speaking people agree substantially, hence those of England, Canada, United States and Australia, agree very largely, the Common Law of England being the basis of all.

8. Property—Rights of Property consist in the free use, enjoyment and disposal of a person's *acquisitions* without any control or diminution save only by the laws of the land.

The objects of such rights of property are,

1. THINGS REAL, *i.e.*, such as are permanent, fixed and immovable, called *Real Property*, *Real Estate*, or *Realty*, *e.g.*, lands, houses, etc.

2. THINGS PERSONAL, *i.e.*, goods, money, merchandise and all other movables which may attend the owner's person—called *Personal Property* & *Personalty*.

9. Real Property, sometimes called REAL ESTATE, consists of lands together with all trees, buildings, etc., thereon, or mines, etc., under the surface.

10. Personal Property consists of (a) movable articles of all kinds, such as goods, furniture, live stock, implements, machinery, etc. This belongs to the class of things *in possession.* (b) The second class is such as accounts, debts, claims, etc., the amount or value of which we *are to receive from other persons.*

CHAPTER 1.

CONTRACTS.

- (1) DEFINITION.
- (2) VOID.
- (3) VOIDABLE.
- (4) JOINT.
- (5) SEVERAL.
- (6) SEVERABLE.
- (7) EXECUTED.
- (8) EXECUTORY.
- (9) MUTUAL PROMISES.
- (10) SEVEN REQUISITES.
- (11) POSSIBILITY.

1. Definition.—A Contract is an agreement or bargain entered into between two or more parties, to do or not to do some particular thing for a consideration, and enforceable by law. The Contract is the basis of all commercial transactions and the laws governing Contracts are the laws governing all classes of business. From the business of the day labourer to that of the railway magnate, all are governed by the principles of Contracts.

CONTRACTS ARE
1. Express.—In which the terms are, at the time of making defined in writing or openly stated and avowed.
2. Implied.—In which the law presumes what the parties undertake to perform.

2. Void Contract Is one which had from the beginning no legal effect except in so far as a party to it may incur a penalty.

3. Voidable Contract Is one which takes its full and proper legal effect unless, and until, it is set aside by some one entitled to do so.

4. Joint Contract Is one where persons agree to do certain work jointly.

5. Joint and Several Contracts is one where persons bind themselves jointly to perform the work; also each one binds himself to do all the work, if necessary.

6. Severable.—A Contract is said to be severable or divisible where the consideration on either sides may be divided so that it can be apportioned to corresponding parts on the other side. For example : Y agrees to purchase all the wheat X can furnish him, like a certain sample, at a certain price per bushel. This wheat might be delivered one bushel per day, or a thousand bushels per day, and the consideration would be paid in such proportion.

7. Executed Contract.—An Executed Contract is one that is completed, both as to what is to be done and as to the consideration. For example, you go into Mr. Brown's shop and ask for a hat. He shows you a suitable one : he asks four dollars for it ; you take the hat. The transaction is complete, and therefore *executed.*

8. Executory Contract.—An Executory Contract is one that is to be **completed** by one or both parties at some *future time.* In case of a sale, the **ownership** of the property remains in the seller for the time being Example, (1) A agrees with B to build a house for him by a certain date, for which B is to pay him $400. Example (2) X agrees to purchase from Y a certain horse two weeks hence for which he agrees to pay $120. The title still remains in Y till delivered; and should the horse die in the intervening time Y would be the loser.

A contract may be *executed* as regards one of the parties ; and *executory* as regards the other : *e. g.* A and B agree to exchange horses. A actually delivers his horse over and B thereupon promises to deliver his horse in one week—this contract is executed as to A and executory as to B.

9. Mutual Promises.—It will be noticed from the above that in Executory contracts there must be promises by both parties. In the above example, A promises to build a house for B, and B promises to pay A $400 for doing it. The promises are mutual, each depending on the other, and being the consideration for the other in the meantime.

10. Requisites.—The following are the requisites to a valid contract :

(1) It must be possible;
(2) It must be legal;
(3) It must be made by competent parties.

(4) It must be assented to by each party;
(5) It requires a consideration (generally);
(6) It must be without fraud;
(7) In many cases it must be in writing, signed by the parties chargeable therewith, and some written contracts must be under seal.

II. Possibility.—A Contract to do an impossibility is void, because it cannot be fulfilled. If a person were to agree to move a farm from one country to another, the contract could not be enforced. The thing to be done, however, must be impossible from the nature of things. Suppose A agrees to build a house for B, and complete it by a certain date. A strike among the mechanics he employs renders him unable to finish his work by specified time. This would not make it a void contract as the circumstances were not external and might have been foreseen or prevented. X agrees to build a boat for Y, but is unable from lack of skill. This would not void the contract, nor would the sickness of one of the parties be excuse to void the contract. Because other persons could be hired who had skill to build the boat if the contractor was not skilled, or was prevented by sickness.

CHAPTER 2.

CONTRACTS, Legal and Illegal

- Legal.
- Illegal
- To do an Immoral Act.
- Made on Sunday.
- Against Revenue Laws.
- Against Common Laws.
- Compounding a Felony.
- In Restraint of Trade.

1. Legal Contracts one in which neither the thing to be done nor the consideration for it is forbidden by law. If either is forbidden by law it is considered hurtful to the general public, hence neither parties can enforce it. Even if one party has performed his part or paid his money the law will not help him, as the contract is considered wholly vicious.

2. Illegal Contracts one in which parties undertake to do what the law positively commands not to do, or any contract which has for its purpose the furtherance of any object contrary to justice or common morality. This is the general principle. This subject may, perhaps, be best presented by taking up a number of specific cases.

3. Contracts to do any Immoral Act are void. Among these may be mentioned Contracts :

(1) To lead an immoral life;

(2) To publish, sell, or transmit by mail immoral and obscene pictures or publications, or seditious publications;

(3) Of bribery in case of elections:

(4) Sunday desecration either for purpose of business or pleasure;

(5) Bets and wagers;

(6) Gambling;

(7) Lotteries and raffles;

(8) Buying stocks on margins;

4. Contracts Made on Sunday.—According to our laws Sunday is a day of rest and not for works except works of necessity or mercy, hence business done on that day is done contrary to statute law and on that account illegal.

5. Contracts Against Revenue Laws.—A few of these cases may be mentioned. Contracts in violation of the revenue laws defraud the public of the revenue due which is used for the support and maintenance of government. A contract to smuggle dutiable articles into a country or to make incorrect returns of liquor or tobacco manufactured, could not be enforced nor could pay for doing them be collected.

6. Contracts Against Other Laws.—Among these we might mention contracts to sell liquor without license, to burn buildings, to destroy property, etc.

7 Compounding a Felony.—If a person guilty of some crime makes any agreement to pay another person or to do anything for his benefit as a consideration for not prosecuting him, it cannot be enforced. Suppose A has embezzled B's funds, and he or his friends agree to pay B a sum of money to forbear prosecution, the payment cannot be enforced. Even though a promissory note or bond be given it cannot be collected by B. The promise not to prosecute is itself a crime that is punishable.

8. Contracts in Restraint of Trade.—A general contract whereby a person agrees not to carry on a certain trade or business or profession is illegal. This of course is general and not limited to a community.

An agreement not to carry on a particular business is valid upon the following conditions.

1. It must be founded on a valuable consideration.

2. The restriction must not go, as to its extent in space or otherwise, beyond in the judgment of the court is reasonably necessary for the protection

of the other party. A contract made by A, selling out his trade to B, agreeing not to start the same business in that community, is not in restraint of trade, as A may go to another place and begin again. A contract by which A would engage not to carry on a business *in any place*, would be illegal. Combines that limit the quantity to be manufactured of any goods or commodity and in this way do away with ordinary competition so as to fix or increase values of the goods, are illegal.

CHAPTER 3.

THE PARTIES TO A CONTRACT.

- Competent Parties.
- Incompetent Parties.
- Incompetent Bind Competent Parties.
- Necessaries for Incompetent Parties.
- Idiots.
- Lunatics.
- Intoxicated Persons.
- Infants.
  - Ratification of Contracts.
  - Disaffirmance of Contracts.
  - Agency.
- Indians.
- Married Women.
- Corporations.

1. **Competent Parties.**—Every contract requires two or more competent parties to it. Competent parties must be :

(1) Of legal age;
(2) Of sound mind;
(3) If women, unmarried except in certain cases;
(4) If aliens, their nation must be friendly;
(5) If Corporations, the contract must be such as is specially allowed in their charter, or from the nature and operations of the Corporation.

2. **Incompetent Parties.**—Others than those possessing the foregoing qualifications are, generally speaking, incapable of binding themselves in contract, hence they are called incompetent parties. Exceptions to this are mentioned under their appropriate headings. These incompetent to contract may be classified as follows :

By Reason of Natural Personal Inability.
(1) Idiots;
(2) Lunatics;
(3) Intoxicated Persons;

By Reason of Legal Inability.
(1) Infants;
(2) Indians;
(3) Married Women;
(4) Alien Enemies;
(5) Corporations limited by their Charter.

3. Incompetent Parties Bind Competent Parties.—A contract is made between an incompetent person and a competent person. The competent person can generally be compelled to carry out his part, but the incompetent person's part cannot be enforced against him. He really has a choice as to whether he will or will not carry out his part. He cannot enforce a contract against a competent party to his own advantage and refuse to carry out his part. He cannot use the law that protects him for the purpose of defrauding others.

4. Necessaries for Incompetent Parties.—The general exception to the rule that infants, lunatics, &c., are unable to make contracts is in the case where they bind themselves for the necessaries of life,

(1) Food;
(2) Clothing;
(3) Medical Attendance;
(4) In case of Infants, for Education.

Each of the foregoing items must be suitable to the person's station in life. For example : A young man under twenty-one years of age in circumstances of an ordinary mechanic could not bind himself for expensive luxuries of living or dress, but only for such as are necessary for ordinary comfort and protection. A contract for necessaries for such persons, charged at exorbitant prices could not be enforced. Only the intrinsic value of the articles could be collected.

5. Idiots.—An idiot is a person that never had reason or intellect. He is therefore incapable of understanding the nature and effect of any contract. He is therefore incapable of doing the business pertaining to the ordinary affairs of life. If he is the owner of property by inheritance it must be managed by others for him.

6. Lunatics.—A lunatic is a person who had reason and intellect but has lost them. Some lunatics have lucid intervals when they are sane enough and are, during that time, perfectly capable of contracting. Contracts with or by a lunatic are voidable at his choice, if at the time of making the contract it can be shown that he was absolutely incapable of understanding what he was doing and *that the other party knew of his condition.*

7 Intoxicated Persons.—An intoxicated person may be considered in the same way as a lunatic, having lucid intervals. Intoxication by liquor or drugs must be so complete that the person is deprived of his capacity to act and think. The rule in the foregoing section 6 applies to the contract of an intoxicated person the same as to that of a lunatic.

8. Infants.—A person under twenty-one years of age is called an infant or minor. Legally a person comes of age the day before the twenty-first anniversary of his birthday. The laws are very carefully framed to protect the rights of those incapable of caring for themselves. The theory of the law is "That before the age of twenty-one the human faculties are immature, undisciplined and incompetent to guard against artifice or subtlety and it therefore extends to them its protection and guardianship." The infant who is living with a parent or guardian has not power to make contracts and bind even for the necessaries of life. The parent or guardian is liable for such supplied to the child under his protection. If the child is separated entirely from parent or guardian he has power to contract for necessaries. Although infants are generally speaking, not amenable to law on contracts, they are, however, answerable at law for all criminal offences, trespass, assault, &c.

Exceptions.—An infant becoming owner of shares in a Stock Company is liable during minority for all calls accruing due on the same, unless there was an express agreement to the contrary at the time of purchase. An infant that is a partner may rescind his partnership at his majority. He cannot, however, rid himself of the liabilities of the business, contracted during his continuance as a partner.

Ratification.—An infant making an executory contract may ratify it on coming of age:

(1) By doing so in expresss words or writing;
(2) By performance or part performance of it;
(3) By retaining the benefits accruing to him from it.

It will be noticed that the firs is really a new contract and the second and third are new contracts by implication, if not really expressed in words. If not rescinded within reasonable time they may be considered as ratified.

Disaffirmance. An infant may, on becoming of age, disaffirm his contracts that are executory. This must be done within reasonable time. It will not do to wait six months or a year and then rescind them. If he disaffirms a contract on becoming of age he must restore to the other party whatever property or consideration he may have received, as far as lies in his power.

Agency and Infants.—An infant may not appoint another person as agent as the agent could not bind the infant. An infant may, however, act as agent for another person capable of making contracts and bind him in contracts made on his behalf.

Indians.—"The Noble Red Man" isa ward of the Government, is cared for, and maintained by the Government, and is considered incapable of caring for himself or protecting his own interests. He is a sort of permanent infant, and is incapable of binding himself in a contract even for necessaries.

Married Women.—A woman unmarried—a spinster or widow—may make contracts as freely as a man. At common laws a contract made by a married woman was void, the theory being that the husband and wife were one person, her legal personality being merged into that of her husband at marriage. This has, however, been modified, very materially, [see Revised Statutes of Ontario, 1887, Chapter 132, and Revised Statutes of Manitoba, Chapter 95.] A married woman may contract as freely as before marriage in reference to her own property, or "Separate Estate," as it is called. She may also engage in business or trade on her own account. A married woman's property is all that she owned before marriage, all gifts, legacies, property received as heir-at-law of intestate estates, also all her earnings, profits in trade on her own account, &c. This does not include gifts from her husband. She may also take and enjoy all the earnings of her children, by getting an order from the judge if separated from her husband, or deserted by him or if he is confined in prison as a criminal.

Alien Enemies.—Under ordinary circumstances contracts made with or by citizens of other countries are as binding as those made by natural born subjects in our own country. An alien enemy cannot, during time of war, make a fresh contract, or enforce any existing contract without a license from the Crown. As to contracts made before war commenced, his rights are only suspended, and the contract can be enforced upon peace being declared. It is, however, a well recognized law of nations that whenever war is declared between two countries they are enemies and all contracts existing between their citizens are suspended, and all contracts made after declaration of war are void. Commerce is suspended as the manufacture of a country might be supplying their enemies with arms and other articles that were needed at home.

Corporations.—A Corporation is an artificial person created by law and really composed of a number of persons joined together and endowed with the capacity of perpetual succession. For the present purposes we will divide them into

(1) Trading Corporations.
(2) Non-Trading Corporations.

The former are principally Joint Stock Companies formed for the purpose of carrying on some particular trade or business. Their Charter only

allows them to make contracts in their own line of trade. Those made relative to other matters would be void. Non-Trading Corporations are such as Towns, Cities, Townships, &c., formed for carrying on public business. If a Non-Trading corporation were to engage in manufacturing implements it could not make a binding contract as it exceeds the privileges granted in its charter.

The general rule as to Corporation contracts is that a Corporation can only be bound by contracts uuder the seal of the corporation.

The exceptions to this rule are

1 **Trading Corporations** may by their agents enter into simple contracts without seal when such contracts relate to the objects and purposes of the Corporation.

2 **Non-Trading Corporations** may enter into simple contracts (without seal.)

(*a*) In matters of trifling importance or daily necessity, e. g. the hire of a servant or supply of coal.

(*b*) In matters of urgent necessity admitting no delay.

CHAPTER 4.

CONSENT.

- Mutual Consent—Definition.
- Specific Offer.
- General Offer.
- Acceptance.
- Acceptance by an Act.
- Duress.
- Time.
- Proposal by Mail.
- Acceptance by Mail.
- Mistakes.
- Custom or Usage.

I. **Mutual Consent** may be defined as a meeting of minds. They must meet or be a unit on the same thing, else there can be no contract. The parties to every contract, however extensive or trivial, show their willingness to make a contract by what we might term the elements of a contract, viz.,

(1) Offer by one party;

(2) Acceptance by the other party;

Example. If A, a merchant, offers a coat to B for $10, and B says "I

will accept your offer," or other words of similar effect, a contract has been made. This may be done

(1) Orally, by speaking to one another;
(2) By writing (informal) e. g., letters to one another;
(3) Formal, by writing out, and being signed by the parties to it;
(4) Specialty, by being written, signed and sealed.

2. Specific Offer.—The beginning of every contract is made by one person making an offer of some kind to another. This is sometimes called making a proposal. For example,—A says to B, I will sell you this horse for $100. This is an offer. B says I will not do that, but I will offer you my cow and $50 for your horse. Here we have a second offer. There was no contract in the first place as the parties failed to *agree*. The second will be continued under section No. 4.

3. General Offer.—A general offer is one made to no one in particular, but to every person. EXAMPLE,—Property offered for Sale in an advertisement or at Auction. A railway or other common carrier makes a general offer to carry passengers or freight.

4. Acceptance.—The agreement or willingness of a party to take the offer of the other, expressed or written to the person making the offer, is acceptance. In the example section 2 B has offered his cow and $50 for A's horse. If A says I will accept your offer a contract is made.

Rules respecting Proposal and Acceptance.

1. The acceptance must be unconditional and identical with the terms of the proposal.

2. A proposal may be revoked before acceptance, but not after.—An acceptance cannot be revoked;

If the parties are contracting orally in each other's presence a proposal may be revoked without notice;

If the parties communicate by correspondence, notice of revocation of a proposal must reach the party to whom the proposal is made before he has accepted it.

3. It matters not whether the offer is specific or general, the acceptance must in all cases be specific.

Acceptance by an Act.—Acceptance need not always be made in words it may be given by an act. A goes into a shop and says to the proprietor, I will give you $4 for this hat. The proprietor hands him the hat thus accepting by an action. A sends goods to B's house, and B uses the goods. B will

be liable on an implied contract for their price. A requests B, a wholesale merchant, to send him certain goods. It is understood or implied, though not expressed, that A will pay a fair market price for the goods to B.

A proposal need not be made to a specified individual, but no contract can be formed until it has been accepted by a specified individual : *e.g.*, A advertises a reward of $10 for the recovery of his lost dog—the offer is not to any particular person but to every person. If B finds and restores the dog the contract is made and he can claim the reward.

Duress.—It is the theory of the law that all competent persons are free to make as many contracts as they may see proper, and of whatever kind they may desire, so long as within the limits of the law, hence it is illegal to restrain a person from making a contract, and likewise illegal to compel a person in any way to make a contract. Any contract, made because of any threat or constraint, may be voided at the option of the party who has entered into it under Duress.

7. **Time.**—An offer made orally, unless otherwise specified, is supposed to be accepted immediately and in this case may be revoked or withdrawn any time before it is accepted. An offer may be made, however, giving time for acceptance, if there be a specified sum paid by the second party as a consideration for the privilege of extended time.

EXAMPLE 1—X offers to sell to Y his business for $1000, payable half cash and half in a year's time. Y says I will give you $5 for the privilege of considering your offer and accepting or rejecting it any time within a week. The $5 are paid and a memorandum made and a receipt accordingly given by X. This is a case of a contract within a contract, the consideration for the $5 being that Y has the exclusive right to purchase the business any time within a week if he elects to do so.

8. **Proposal by Mail.**—A proposal may be made by mail or telegraph Such offer continues valid until it is revoked unless the time prescribed for acceptance has lapsed, or there is lapse of reasonable time before acceptance. The acceptance of an offer is the consummation of a contract, hence a letter or telegram revoking it is of no avail unless received by the second party before acceptance.

9. **Acceptance by Mail &c.**—An offer is accepted by mail when the letter containing it is placed in the post office, or by telegraph when the telegraphic despatch is delivered to the Company, hence any revocations of an offer must be received before the letter of acceptance is mailed or the telegram of acceptance is sent, or the acceptance of the offer will be enforceable

EXAMPLE.—A writes to B Aug. 12, offering him 1000 bushels of wheat at $1.25 per bushel. A writes to B Aug. 15, revoking the offer. B received the letter on the 14th Aug. and posted acceptance on the 16th and received the revocation on the 17th. B can enforce the contract.

10. Mistake.—Where the parties may not have meant the same thing or one or both may have formed untrue conclusions as to the subject matter of the agreement.

Where there is a mistake in the terms of agreement, and one of the parties being aware of the error seeks to take advantage of it the contract is void.

EXAMPLE.—Every person making a contract is supposed to understand the meaning of the words he uses. If I intend to order 20 chests of tea and by mistake write 220 chests in my letter, the party I order from may, if he chooses, compel me to accept and pay for the 220 chests.

11. Custom or Usage —The custom at the time and place that a contract is made has great weight in determining the meaning of a contract.

EXAMPLE.—A agrees to build a stone house for B at the rate of 50 cts. per perch. In some places a perch of stone work is considered as 16½ cubic feet of wall; in other places 24¾ cubic feet. If any dispute arose the custom of the locality would have to be ascertained to settle the disputed point.

CHAPTER 5.

CONSIDERATION.

- DEFINITION.
- PROMISES WITHOUT A CONSIDERATION.
- EXCEPTIONS.
- DIVISION OF CONSIDERATIONS.
- GOOD CONSIDERATION.
- VALUABLE CONSIDERATION.
- INSUFFICIENT CONSIDERATION.
- ILLEGAL CONSIDERATION.
- IMPOSSIBLE CONSIDERATION.
- ASSIGNMENT OF A CHOSE IN ACTION.
- MORAL OBLIGATIONS.
- EXECUTED CONSIDERATIONS.
- FAILURE OF CONSIDERATIONS.

1. Definition.—Consideration is some gain to the party making the promise, arising from the act, or forbearance given or promised of the promisee. Consideration is the price of the promise, or the cause that moves the parties to enter into a contract.

It is something (1) Given,
(2) Done, or
(3) Promised to be given or done by the person to whom a promise is made.

For this consideration, the person to whom the promise is given either

(1) Gives something (in case of a sale) ;

(2) Does something (in case of service rendered), or ;

(3) Promises to give or do something in the future.

A promises to build a stable for B, and B promises to pay A, as consideration for his work, the sum of One Hundred Dollars. It will be noticed

(1) That one promise is a consideration for another promise;

(2) That if one party does not carry out his promise, the other party is not bound to carry out his part.

In the above example, if A fails or neglects to build the stable, B will not be required to pay the Hundred Dollars.

2. Promises Without Consideration—It was stated in a previous chapter that a contract without a consideration is void. The consideration is the inducement upon which the party agrees to be bound. If there is no consideration, there is no reason for the contract—it is not enforceable. There is nothing to support it. Honor and morality require the fulfilment of promises. The object of the law is to prevent injury, not to make people faithful. A person to whom a bare promise is made, cannot claim injury for non-fulfilment, as he has not tendered any equivalent for it to the promisor. There has been neither benefit to the promisor or detriment to the promisee.

3. Exceptions—(1) All contracts made under seal are valid, whether there is a consideration or not. The placing of a seal on a contract makes it final. The seal itself is said to be a consideration.

(2) The second exception is a very common one, as well as an important one, that is negotiable paper—Notes, Cheques and Bills of Exchange. Accommodation paper is perhaps the most notable example of this kind.

In Bills of Exchange and Promissory Notes, consideration is *presumed* to exist. The burden of proving want of consideration is thrown upon the defendant.

4. Division—Consideration may be divided or treated as follows :—

1. Good ;
2. Valuable { A benefit to the promisor; / A detriment or inconvenience to the promisee
3. Insufficient;
4. Illegal;
5. Impossible;
6. Executed;

5 A Good Consideration is "natural love and affection" that exists between near relations. It is good

(1) As between the parties themselves to support an executed contract;

(2) But not good as against third parties.

On the first point, a good consideration in a deed of land already made from father to son will support it. A consideration will not support a promise to make a deed sometime in the future.

On the second point, suppose the father when he is insolvent, in consideration of "natural love and affection" conveys to his son a piece of property in order to keep it from his creditors, the consideration will not support it as against the creditors, who really ought to have the property to help satisfy their claim.

6 Valuable Consideration.—The first division is that of a benefit to the promisor. X promises to dig a drain for Y, and Y agrees, in return for this work, to pay X ten dollars. Here the Ten Dollars is a benefit to X, the promisor. Any other thing or service that is of value would answer as a valuable consideration instead of the Ten Dollars, such as goods, professional services of a lawyer, doctor, &c.

The second division, "A detriment, loss or inconvenience to the promisee." A promises to give B his horse if he will find him. The trouble and expense of finding the horse, on B's part, would be a valuable consideration for the horse and he could become possessed of him and hold him for such consideration.

7 Insufficient Consideration—Every person making a contract is left to judge for himself as to whether or not he gets sufficient consideration. If A gives B a $100 horse for $50, the law will not interfere, as A must have considered $50 sufficient consideration. The Courts say that "the law detests litigation," and therefore will consider anything a sufficient consideration which rests or suspends litigation. If I sell an article too low, or agree to do work at a price that will not pay me I must abide by my bargain. The only case where insufficient consideration can be used as a plea, is in a case where there is fraud, where the party has been deceived, and the insufficiency is caused by the fraud.

8 Illegal Consideration renders a contract void. It is no consideration. When the consideration is forbidden by law, the party promising the work or goods is relieved from his part.

9. Impossible Considerations will not support contracts. Suppose M offers to drain Lake Huron as a consideration for some contract, the contract would not be enforceable, as no person is compelled at law to do an impossibility.

10. Assignment of Chose in Action is a valuable consideration for a contract. A Chose in Action is a Book debt, claim, or right to receive money for breach of contract, or a personal wrong (a tort). All such claims are transferable by assignment, except those for personal injuries. A tort is not assignable.

11. Moral Obligations.—An honorable man will fulfil his promises in all cases, whether the law require him to or not. As stated before, the law is to prevent injury, not to make men good citizens. The man that simply lives within the law, would not be called a good citizen. To live so as just to keep clear of the clutches of justice, is to live on a very low plane indeed. If the law were to make moral motives a sufficient consideration for a contract, it would annihilate the necessity for valuable consideration entirely, as the mere giving of a bare promise creates a moral obligation to perform it.

12. Executed Consideration.—Where one person, A, has already given goods, services, or other value to another person, B, this is a sufficient consideration to sustain a promise from B to repay money or return goods or services for what A has given him. A debt barred by the statute of limitations, or by composition deed in case of insolvency, is sufficient consideration to support a promise to pay such debt. An executed consideration is sometimes acknowledged in the words "value received,"

13. Failure of Consideration,—If the consideration of a contract entirely fails, the contract is void. If the consideration only partially fails, the contract is valid, and the other party may claim damages only for the part that failed.

EXAMPLE.—A sells a patent right for a fence for the County of Grey to B. The patent is found to be void. A cannot collect the amount due him on the contract, or enforce payment of any note he has received, as payment for such contract.

CHAPTER 6.

FRADULENT CONTRACTS.

1. Definition.—Any cunning, deception, artifice or device used to circumvent, deceive, cheat or mislead any person in making a contract, is fraud. It is impossible to give a definition wide enough to cover fraud in all its various forms.

In general terms: Fraud is a *false* representation of *fact*, made with a knowledge of its falsehood, or a *disregard* of whether true or false, with the *intention* that it should be acted upon by the injured party. The representation must *actually deceive*. It may be practised in two ways,

(1) By making statements known to be false;
(2) By concealment of facts known to be true that should be known.

With reference to the parties upon whom fraud is practised there are two classes,

(1) By one party to another to induce him to make a contract;
(2) By two parties to defraud a third person.

2. Voidable—Not Void.—The party upon whom fraud has been committed is not bound to carry out his part o the contract. He may avoid it. If he choose to affirm it he can have the representations made good. He cannot however, disaffirm the contract altogether:

(1) If in the meantime he has accepted some benefit, or continued to act under it after he had become aware of the fraud;
(2) If he did not give notice of the fraud within a reasonable time after discovery of it;
(3) If innocent third parties have acquired valuable interests in the contracts.

3. The Dishonest Party in all cases is bound to carry out his contract. He cannot disaffirm it. If both parties have acted dishonestly, there is no relief for either of them. Neither one can force the other to carry out his contract

4. Mis-Statement of Fact.—This is the more common example of fraud. A sells a horse to B for $80, and represents him to be quiet in harness and true to draw, when he is not. This would be fraud. It will be noticed that mis-statement of *fact* is what is dealt with here, not of *opinion*, *conclusion* or *inference*. Assent to a false statement would be equivalent to a mis-statement.

5. Concealment of Fact.—This applies to facts that are known to one party and not easily discovered by the other party. Facts that the second party could easily have knowledge of by exercise of ordinary diligence, is not a concealment of fact. Suppose the horse mentioned in the foregoing section (4) had lost an eye, it could easily be seen, and could not be counted concealment, if not mentioned by the seller. Silence on any point may amount to concealment of fact.

6. Fradulent on Third Parties.—This may be accomplished by

(1) Legal means;
(2) Illegal means;

The former class keep out of the clutches of justice; the latter is criminal, though no worse than the former. The following are a few common examples of legal transactions fradulent on third parties:

(1) Puffers at auction sales;
(2) Putting property in the names of other parties to save it from creditors, in case a person is insolvent;
(3) Selling goods without bill of sale and retaining possession of them.
(4) Fictitious sales of property at an enhanced price, so as to influence others to pay high figures, &c.;

It is legal to sell property and bid at auction sales, but these are legal means used for fraudulent purposes and are termed conspiracy.

7. Statute of Frauds.—The statute bearing the foregoing name was passed in the 29th year of the reign of Charles II of England. Parts of it have been incorporated into the laws of almost every civilized country. These provisions relate to the making of certain contracts in writing, signed by the parties chargeable therewith. These points will be fully considered i the following chapter. The Statute of Frauds does not make anything a fraud that was not previously a fraud; it simply states that in order to make certain contracts valid, there must be some tangible evidence of the intention of the parties making the agreement.

CHAPTER 7.

CONTRACTS,—Oral Written and Specialty. THE STATUTE OF FRAUDS.

- Division.
- Writing, Printing, &c.
- Statute of Frauds.
- Oral Contracts.
- Written Contracts. (formal)
- Written Contracts (informal)
- Specialty Contracts.
- The Seal.
- Guaranty and Suretyship.
- Promises in Consideration of Marriage.
- Real Estate.
- Time.
- Partly Oral, Partly Written.

1. Division.—Contracts are divided into—

(1) Oral,
(2) Written (informal.)
(3) Written (formal.),
(4) Specialty Contracts.

In this chapter we will look at them as thus divided.

2. Writing, Printing, &c.—Written contracts may be written with ink or pencil, or printed or written with a typewriter, or by any other process for the production of words on paper, parchment, &c., or may be partly written and partly printed. In case of a contract partly written and partly printed, if there be writing and certain printing in the same contract that disagree, the writing will be regarded as authority.

3. The Statute of Frauds.—The famous statute of the above title, passed in the 29th year of the reign of King Charles II., has been re-enacted, to a great extent, into the laws of all trading countries. In Ontario some sections of it are brought into effect with a few minor variations in Revised Statutes, 1887, Chapter 123; and in Manitoba, Chapter 10, Revised Statutes of Manitoba. This Statute is not for the purpose of defining fraud, but for preventing it by enacting that certain important contracts should be in writing, and signed by the person or persons chargeable therewith. It does not provide that all such contracts should be written out in legal phraseology, but that "*some memorandum*" of the contract must be signed by the party chargeable

therewith, or by some other person duly authorized by him to sign his name. Hence, poor spelling, indifferent grammar, do not operate against a contract. All that is necessary is that it be a clear expression of the intention of the parties. The following are the provisions of the Act, that are important as bearing on this subject:—

(1) No action shall be brought whereby to charge an executor, where an executor or administrator promises to answer for damages out of his own estate, unless the promise is in writing signed by him.

(2) Where a man undertakes to answer for a debt, default or miscarriage of another, it must be in writing (see guarantee or suretyship).

(3) Where a contract is made upon consideration of marriage (not engagement) it must be written.

(4) Where any contract is made respecting Real Estate, or any interest in Real Estate, it must be in writing and under seal.

(5) Where an agreement is made that is not to be performed within one year, it should be in writing.

(6) An executory contract of sale of personal estate of more than $40.00 must be evidenced in one of the following ways, in order to be binding;—

(1) By being in writing.
(2) By partial payment (earnest money), or
(3) By partial delivery of goods.

The law is the same in all Canadian Provinces, except that in Prince Edward Island, the limit of a purely verbal contract is $30, instead of $40.

4. Oral Contracts.—those made by the parties speaking to one another, are limited as to time to one year, and in amount to $40.

The value of the contract may be extended

1. By a small payment, usually called "earnest money," or as some say, "something paid down to bind the bargain."

It does not matter how small the sum, so long as it was paid with that intention; one cent might be earnest money for a $1000 contract, so long as paid for that purpose.

2. By a partial delivery of the goods. A might sell to B a million bushels of wheat, and bind the contract by delivering to B a handful of wheat for that purpose.

Oral contracts are valueless, so far as transactions in Real Estate are concerned; likewise in any contract to guarantee or to be surety for another.

5. **Written Contracts, (Informal)**, are such as are contained in letters, etc. They are very common, and are just as binding as the formally written contracts. It is obvious, that it is of great importance that all such letters should be copied, so that each person to such contract may know just what the terms of offer and acceptance are. A copy written off with pen or lead pencil, before such letter is mailed, would answer the purpose; but a letter press copy is of much greater legal value, as there can be no variation between the letter and copy.

6. **Written Contracts, (Formal)** are such as have been carefully reduced to writing, usually in legal phraseology, and contain the whole contract, both as to what is to be done, how it is to be done, and the consideration therefor.

7. **Specialty Contracts** are those in writing and under seal, otherwise called "*Contracts by Deed.*" A deed, therefore, does not simply mean a sealed document to convey land, but in its fullest sense embraces all sealed contracts. They are binding, without consideration being expressed, the seal being the consideration. The contract by deed is looked upon as a much more solemn contract than others. Any contract may be made under seal.

8. **The Seal** is a relic of "ye olden time," when the business of a man was said to be war, when in England the Lords, Dukes, &c., could not write but gave their assent to their contracts by making an impress of their seal in hot wax on the contract. The seal usually had the family crest engraved on it. Now anything stuck on after the name may be called a seal. When any device is printed or written after the name, or the letters "L. S." the seal may be put on any time afterwards. The seal should be touched by the person signing, and acknowledged to be his seal. Many put their initials on the seal with pen and ink, after signing their names, thus practically identifying their seal.

All Corporations, Joint Stock Companies, &c., must have a corporate seal, which the officers must attach or impress on all contracts, in order that they may be binding on the Corporation or Company.

9. **Guaranty and Suretyship**—This is one of the most common transactions that comes under the Statute of Frauds. All such contracts should be in writing, or they are void. As under the statute of frauds mentioned before, the person to be charged with

(1) The debt of another person,

(2) The default of another person;

(3) The miscarriage (lack of full performance) of another person must sign some memorandum of the same in writing.

When a person guarantees another, or becomes his surety, he is not the principal debtor, only a collateral debtor, to be called on only on the default of the principal original debtor. An illustration will best explain the point.

A goes with B to the merchant C, and says to him, Give B ten Dollars' worth of goods; if he does not pay for them, I will. Here B gets the goods, and is principal debtor. A is only surety or collateral debtor, and his oral promise is not legally sufficient to bind him. We will now just change one circumstance, and A will be principal debtor, and not surety. Suppose A says to C, Give ten Dollars' worth of goods to B, and *charge them to me* (A). If he does not pay for them, I will. The authority of A to charge the goods to him, makes him principal or original debtor. and not surety. The debt is his, not B's. Though it is intended that B pay for the goods, it makes no difference. A's verbal authority to charge the goods to him is sufficient to bind him, but his verbal guarantee is not. In the last case the goods are bought by A, but delivered to B.

10. Promises in Consideration of Marriage.—Promises of marriage differ from those where the consideration is marriage. Two persons, A and B are "engaged," in other words, have each promised to marry the other. The promise of one is the consideration for the promise of the other, If, however, A promised that when they were married he would give certain property to B in consideration of that event, then such promise must be in writing, signed by the person A, who is chargeable with it, while the mutual promise to marry would be binding if simply verbal. If C promised to give to A or B, or to both of them, certain property in consideration of their marriage, it must be in writing, signed by C, or he will not be legally bound by his promise.

11. Real Estate, &c. —The application of the statute of frauds to sales of Real Estate, Personal Property, to executors, administrators, will be dealt with under their appropriate headings, in other parts of this book.

12. Time.—All contracts that are not to completed within one year, should be in writing. If A agrees with B. to purchase all the wheat grown by B during the next three years, such contract should be in writing. The reason why such enactment is made is that the memory is to a certain extent uncertain, and the longer the time that elapses, the more indistinct will be the recollection of the terms of the contract.

13. Partly Written, Partly Oral.—Contracts written out formally usually contain all the provisions and conditions of the agreement. If, however, either formal or informal, contracts are partly written and partly oral, and those parts disagree, the writing will carry the most weight.

CHAPTER 8.

INTERPRETATION OF CONTRACTS.

- The Presumption.
- The Intention of the Parties.
- Technical Terms.
- Custom and Usage.
- Doubtful Terms.
- Writings to be Construed Together.
- Variations Between Printing, Writing, etc
- Outside Evidence.
- Dependent and Independent Covenants.
- Conditions Precedent.
- Entire and Severable Contracts.
- Liberal Construction.
- Construction as to Time.
- Construction as to Place.

1. **The Presumption.**—Where parties enter into a Written contract, the presumption is that they have written just exactly what they intended *to do* and *to pay*, and how it is to be done and paid. Sometimes, however, it is difficult for a person to say just what he desires to say, and nothing else, and to make his meaning clear, and convey no other meaning. On this account it has been found necessary to establish general rules of interpretation of contracts, a few of which will be touched upon in the following items.

2. **The Intention of the Parties.**—The general rule, and the one to which all others are subservient, is *to ascertain the intention of the parties*. The law will not allow either the grammatical or the literal meaning of the contract to set aside the *original intention*.

3. **Technical Terms.**—In every contract there is almost sure to be one or more technical words, such as apply to the particular business that the contract refers to. All such will be interpreted in the sense in which they are used in that particular trade. The sense may be proved by oral evidence, given by persons skilled in that trade. No person can ascertain too carefully the meaning of technical words, phrases, etc, not only in connection with their own business but with others, so that they may understand the true nature of all contracts they enter into.

4. **Custom and Usage.**—If the usage or custom of a trade in general or in any particular locality, give special meaning to any term, or attaches particular value or number, apart from the general usage, the custom may be proved by oral evidence. Suppose A agreed to work for B at $2 per day, and worked 12 hours per day. If he could prove that it was the custom for 9 hours to constitute a day's work, he would be entitled to be paid at the rate $2.66⅔ per day of 12 hours. An Englishman once agreed to leave 1000 rabbits on a certain rabbit warren. The other party was allowed to prove that in trade a thousand rabbits meant a hundred dozen, or 12 hundred rabbits. In many localities thirteen loaves of bread are counted to be a dozen.

5. **Doubtful Terms.**—When an agreement admits of being understood in different ways, it will be construed according to the sense in which the promisor understood his promise at the time of making it.

6. **Writings to be Construed Together.**—Where a contract is contained in several writings, the general sense of all will be taken together to establish the meaning of the contract. If in letters, all letters relating to the bargain are to be read together. If in two or more documents, written at the same time, between the same parties and relating to the same transaction they must be read together as one contract. If A gives B the goods in his store for a house and lot, the bill of sale that conveyed the goods and deed that conveyed the land, would be construed together to determine the intent of the parties.

7. **Variations Between Writing, Printing, &c.**—Where a contract is partly oral, partly printed, or partly written, and acknowledged to be so, the writing takes precedence over the printing, and the printing over the oral, in case there is any variation as to the terms or conditions of the same.

8. **Outside Evidence.**—When extrinsic evidence is allowed in reference to a written contract, it must not prove anything at variance with the terms of the written contract. It is simply allowed to prove something explanatory, or such as the usage of trade in a locality.

9. **Dependent and Independent Covenants.**—Where a person agrees to do all his part before the other party does his, the second party is not compelled to do any of his part until the other person has first completed his. A is to build a house for B; B is to pay for it when it is completed.

The promise of B to pay for it is dependent on the performance of A's promise to build. X agrees to deliver to Y, on demand, 30 cords of wood; Y agrees to pay for same when it is convenient for him. The promises are independent of each other—Y has the time of payment entirely in his own hands.

10. Conditions Precedent.—If A agrees to give to B an extension of time for the payment of a debt, on condition that C will give B a like extension of time. A is not bound unless C gives the extension. A conditional promise of this kind is called a *condition precedent.*

11. Entire and Severable Contracts.—A contract entire is one in which one party must perform all before the other party does anything. A agrees to cut ten cords of wood for B, after which B is to pay A five Dollars. A could not make any claim when he had cut six cords. If, however, X makes a contract with Y, and agrees to cut for him sixty cords of wood, and Y agrees to pay him a dollar a cord each Saturday night for all cut during the week, this contract is collectible weekly. The payment is not contingent on the entire performance of the work, and is therefore *severable* into weekly portions.

12. Liberal Construction.—If a contract is so indifferently worded that it may mean either something or nothing, the common sense construction will be placed on it, to give effect to the original intention of the parties. The Court will even supply words and expunge inconsistent clauses, to give effect to the intention of the parties at the time of making the agreement.

13. Construction as to Time.—When an agreement states that certain things are to be done in a certain time, the conditions must be complied with. There is one exception. If the last day of performance is on Sunday, or a legal holiday, the time is extended to the day following. The day on which a document is dated is not counted in reckoning the time, but the last day of performance is counted. If the running time is in days, as "thirty days after date," the exact days must be counted. If the running time is in months, Calendar months will be counted. If there is no time mentioned in the contract, it is always presumed that it is to be executed forthwith or within a reasonable time.

In case it is work that cannot, from the nature of it, be performed at once, reasonable time would be determined by the Court, and would depend entirely on the nature of the work to be done; not on a particular person's capabilities or incapabilities for doing such work.

14. Construction as to Place.—Contracts are usually to be performed where they are made, unless

(1) The contract itself states that the performance is to be in another place;

(2) In case of Real Estate. It is immovable, and has to take place where the property is situated.

Contracts made at any place, to be performed there, must be in compliance with the laws existing in that place. If they are contrary to the laws of the province, state or country where they are to be performed, they cannot be enforced, though the parties live in other provinces or countries where the contract would be legal.

A contract is not complete until both parties sign it, hence the place where it is assented to is the place of performance, unless otherwise specified. If a contract is made by letter, the place of that contract is the place where the letter is signed that completed the contract. It is of importance in case of breach of contract, where the contract is made, as that determines the place where the suit will be tried, if it is settled in the courts.

CHAPTER 9.

CONTRACTS—PAYMENT, SETTLEMENT, &c.

- PAYMENT.
- COUNTERFEIT MONEY.
- FORGED NOTES, &C.
- PAYMENT IN PROPERTY.
- PAYMENT BY NOTE OR DRAFT.
- MANNER OF MAKING PAYMENT.
- PRESUMPTION OF PAYMENT.
- APPLICATION OF PAYMENTS.
- PARTIAL PAYMENT.
- COMPOSITION DEED.
- RELEASES.
- ACCORD AND SATISFACTION.
- MERGER.
- ARBITRATION AND AWARD.
- LEGAL TENDER.
- TENDER.

1. Payment.—The consideration in every contract, unless otherwise provided, is money. Every debt or obligation is payable in money, unless otherwise agreed upon.

2. Counterfeit Money will not discharge any debt, even if paid in good faith by one party, and received in good faith by the other party, not knowing

it to be counterfeit. The person receiving it must return it to the person who paid it to him, within reasonable time. The claim or debt for which it was paid remains as before, and may be sued or collected as if such payment had not been made.

3. Forged Notes, Drafts, Cheques, &c.—When any of these is given in payment, even in good faith, it does not discharge the obligation any more than counterfeit money. Such paper must be returned within reasonable time.

4. Payment in Property.—When it is so agreed, a contract or debt may be paid in property of any kind, either real or chattel. When a particular kind of property is stipulated as payment, and that kind is not given as agreed upon, any other kind may be refused, and the debt collected in money. If a debt is payable in money, and a mortgage or lien is also taken as collateral security, such mortgage or lien does not cancel the debt, but in case of default of payment, if the mortgage or lien be enforced and property of sufficient value sold to pay the debt, it is discharged.

5. Payment by Note or Draft does not usually discharge the debt. It simply defers the time of payment to some future time. If, however, A would pay to B a note he held against C for goods or a debt, the note of the third party would pay the debt. B would become an innocent holder for value of C's note, and could enforce payment against C, regardless of any claims of C against A.

6. Manner of Making Payments.—Payments must be made in the way and manner provided for in the agreement. If a place of payment is stipulated, it must be made at that place. Restrictions are often placed as to manner of payment, such as "Payable only at A's office, in gold coin, to A personally, and not elsewhere or otherwise."

If X directs Y to pay a debt due him by sending the money by mail, and if Y follows his directions exactly, he discharges the debt, even if the money is lost on the way and X never receives it. The creditor's directions were complied with. If no place of payment is mentioned, it is the duty of the debtor to find the residence or office of the creditor and pay it there. Payment to a creditor's attorney, or agent, in case of a suit-at-law, is sufficient to discharge the debt, if the attorney or agent is specifically authorized to receive payment and give a discharge.

7. Presumption of Payment.—Payment may be presumed to have been made, under some circumstances, unless there is evidence to the contrary;—

(1) If the document creating the liability is in the hands of the debtor. EXAMPLE—A promissory note is made by X in favor of Y, but is now in X's possession. It is presumed that X has paid it.

(2) If an order or draft, on M is in his possession, it is presumed that he has paid it or delivered the goods it called for.

(3) If a debtor has a receipt from the creditor, the presumption is that he has paid the debt.

(4) If there has been a great lapse of time without any demand, the presumption is that it has been paid. Twenty years cancels any debt, even if under seal.

(5) Subsequent dealings between parties, running accounts with one another after a previous settlement by note the presumption is that the accounts were adjusted when the note was given.

8. Application of Payments.—Where several debts are owing by the same person to one creditor, if all are due, the debtor may direct how the money is to be applied. If, however, it is not sufficient to discharge one debt and is sufficient for another, the creditor may require one fully discharged.

When no directions are given by the debtor as to how the money is to be applied, the creditor may apply it to any debt he pleases, even to one barred by the Statute of Limitations. In case a payment is made where there is both principal and interest, the interest must first be paid. If any balance remains, it should be applied to reduce principal.

9. Partial Payment.—The payment of a smaller sum of money in satisfaction of a larger does not usually discharge a debt that is undisputed. A mere agreement is not sufficient to release such a person, as the smaller sum was not enough for satisfaction of the larger. hence there is nothing left for a consideration for a new contract. *See Chapter on Receipts and Releases.*

10. Composition Deed.—Any debt may be paid by a smaller sum, if there is an agreement, *under seal*, to that effect. The most common case is that of an insolvent, who pays his creditors at a certain rate on the dollar. The release is called a Composition Deed. *See Chapter on Receipts and Releases.*

11. Releases.—Any debt, liability, or obligation may be discharged by a release under seal. In cases of this kind, there may be a nominal consideration of one dollar, or some such sum. It often occurs that if two parties

have been running accounts for sometime, and they come to a settlement though not agreeing with either of their books, they give one another a mutual release, each giving a nominal consideration. *See form in Chapter on receipts and releases.*

12. Accord and Satisfaction. A disputed claim may be settled by accepting a less sum in satisfaction of the debt. Accord and satisfaction simply means agreement to accept a certain sum, article, service or benefit, in satisfaction; for a disputed claim. This differs from a settlement by composition as follows

(1) The amount of the debt claimed by the creditor is not acknowledged by the debtor, but is disputed.

(2) The settlement is made by agreeing upon a certain sum as the amount due, which is in effect an acknowledgment on the part of the creditor that his claim was incorrect.

EXAMPLE—X renders an account to Y, showing him in his debt $60.00. Y in turn renders his account showing only $35.00 due. If they agree to settle the claim at $45.00, or some amount less than the $60.00 claimed by X, it is *Accord and Satisfaction.*

13. Merger is the extinction of a lesser security in a higher security, *e g,* where two parties have entered into a *simple* contract (not under seal) and afterwards enter into the same contract under *seal*, the simple contract merges in the specialty contract, When a security under seal, such as a mortgage, is taken in payment of a debt, it is called a Merger, because the lower form of security, such as note or book account, is merged into a higher form of security. A mortgage taken as a *collateral security*, does not merge the debt. A judgment is a higher form of security. A note or bond that judgment has been given on, is merged into a judgment, and is no longer binding as a note or bond.

14. Arbitration and Award.—In cases where there is a dispute as to the amount due on a contract, the settlement may be left to persons chosen by the parties for that purpose. The disputants usually choose one each, if these arbitrators fail to agree, they choose a third party to help them. The decision of the arbitrators is called an *Award*, and is binding on the parties so long as the arbitrators have kept within the limits prescribed for them. In large contracts of building and other work, it is usual to specify that the value of any extras is to be settled by arbitration. The Architect or Engineer on the work is sometimes sole Arbitrator.

15. Legal Tender is an *attempted* performance of a contract. It is of two kinds:

(1) An attempted performance of a promise *to do* something;
(2) An attempted performance of a promise *to pay* something.

16. Tender is an offer of money, services, property or goods, in satisfaction of a debt. In case of goods, property, etc., it must be the goods or property specified in the contract. If the contract is not payable in money, and does not call for goods, etc., it is payable in money, and money—legal tender—Dominion Government Notes or Gold—must be offered without condition except that of discharge of the debt. If money or goods be tendered, it must not be withdrawn, but be delivered when required, or paid into court, if necessary.

Tender operates,

(1) To stop interest at the time of tender; and
(2) To prevent the person tendering from being held liable for law costs, in case of suit on the debt.

The Tender of money or goods does not cancel or discharge the debt; nothing but the *payment* of a debt discharges the obligation.

CHAPTER 10

CONTRACTS—RIGHTS, DEFENCES, &c.

- Rights.
- Judgment.
- Compensatory Damages.
- Nominal Damages.
- Liquidated Damages.
- Speculative Damages.
- Exemplary Damages.
- Execution.
- Injunction.
- Defences.
- Performance.
- Non-Performance.
- Statute of Limitations.
- Set Off.
- Recession of Contracts.

1. Rights.—Whenever a contract has been made, each of the parties has acquired some right under it. A agrees to cut twenty cords of wood for B. In return, B promises to allow A to live in a house of his for a year. B has a right to require the wood to be cut for him, and A has acquired a right to live in B's house. If either party refuses to perform his part, the other

may sustain loss on that account, hence one would have a right to damage from the other. Such rights when enforced at law, are called remedies, of which there are two classes:

(1) Penal;
(2) Civil.

The first is dealt with by government, the King being the plaintiff; the latter kind, only, is dealt with here.

2. Judgment. —When a contract is broken, the value of the injury to the party willing to fulfill may be proven in court. The decree of the court ordering the party in default to pay a sum of money to the other party, is called a *Judgment*, sometimes called a *Contract of Record.* The certain sum ordered to be paid is called Damages, and is estimated by jury in view of all the facts of the case. Damages are of various kinds;—

(1) *Compensatory Damages*, being the value of the actual loss sustained by the person injured. by the breach of contract.
(2) *Nominal Damages*, where the breach of contract resulted, not from unwillingness to perform, but from inability.
(3) *Liquidated Damages*, where the amount is agreed upon beforehand, by the parties, should damages be awarded. The court settling who is liable for the damages.
(4) *Speculative Damages*, where the profits in a certain business or trade expected to result from goods bought under a contract can be estimated, they may be recovered as speculative damages.
(5) *Exemplary Damages.* When a person has wilfully and maliciously committed a wrong, damages much greater than the monetary value are sometimes granted by way of punishment. This is sometimes called "smart money."

3. Execution.—If the amount of damages is not satisfied within the time set in the judgment, a written order is given to the sheriff by the court, to seize and sell the property of the person against whom the judgment has been given. If property cannot be found to satisfy the debt, the debtor himself may be brought before the court and examined as to his property. (If he has none, he is ordered to pay a sum monthly, or weekly, according to his earning power.) This power, however, is limited to certain courts. The courts of Manitoba do not now direct payment of a weekly or monthly or other sum towards liquidation of a judgment debt. Formerly it was so in the county courts, but that power has been abrogated.

4. Injunction.—In case a person is doing something he has agreed not to do, or is infringing on the rights of others, an order may be given by the court, restraining such a person from continuing such a course of action. This order is called an Injunction.

5. Defences.—In any suit for breach of contract, it very seldom happens that the wrong is all on one side. The person against whom the action is brought—the defendant—usually has some plea to set up against the claims made against him.

6. Performance.— The defendant may set up a defence that he has performed his part, and that the other party, has refused to accept it. In order that such performance be a valid defence, it must have been completed according to the terms of the contract, in style of workmanship, materials and time; and in case of personal skill, performance by a substitute would not fulfil the contract.

7. Non-Performance may be excused, when it is caused :—

(1) By the act of God, that is, such as lightning, earthquake, inundation, fire, or any accident from physical causes, or the death of the person.

(2) By public enemies, that is, foreign enemies, armies, etc., of a hostile country, in case of war. This does not apply to robbers or thieves, resident within the country.

8. Statute of Limitations.—The law allows certain time in which to collect debts—six years, in most cases, for notes and book accounts; ten and twenty years for contracts by deed. If a debt is barred by the statute limiting the time in which it may be collected, it may be a good defence in such a suit.

9. Set Off.—Where a person is sued for some debt or claim, it very often happens that he has some counter-claim, against the person instituting the suit against him. Such counter-claim, or contra account, loss or damage, may be entered by the defendant, and if found correct by the court, will be deducted from any damage proved by the one entering the suit.

10. Recession of Contracts.—When one party is bound to do some act or thing before the other party performs his part, if the other party utterly fails or refuses to perform his part, which is a condition precedent to what is to be done by the second party, the second party may rescind the contract, as the purpose of the contract has utterly failed. He cannot rescind part and consider part binding. In case of rescinding a contract on account of fraud, the party rescinding must be without fault.

CHAPTER II.

STATUTE OF LIMITATIONS.

1. **Limtiation.**—In the section on Presumption of Payment, one of the presumptions that a debt was paid was a long lapse of time without a demand of payment. The statute limiting the time when an action-at-law may be commenced for the collection of a debt or claim, is called the Statute of Limitations. It does not cancel the claim, but it takes away the remedy for the recovery of the debt at law. The obligation to pay remains the same, but the power to collect is removed.

2. **Reasons.**—(1) Old claims are supposed to be doubtful or ill founded. The presumption is that if they were good and just, they would be paid or enforced within reasonable time.

(2) The law is said to detest litigation, and hence the law quieting old claims. It is thought inexpedient and unjust that a person should be troubled with an old stale claim after years of silence as to the collection of it.

3. **Exceptions.**—The limitation does not extend to Bank Bills or Bank Notes, Bank Deposits, and other evidences of debt issued by banks. They are never outlawed by lapse of time. It does not apply to capital in a partnership or Joint Stock Company, or to dividends or profits earned on capital invested.

4. **The Time.**—The time within which a suit must be begun, on all specialty contracts, which include bonds, leases, agreements under seal, etc., is ten to twenty years. Actions on verbal or written contracts not under seal, notes, book accounts, etc., must be commenced within six years after due date. Actions for penalties, damages, etc., must begin within TWO years after the cause for such action arose. The contracts under seal are considered much more solemn, and are supposed to be entered into with deliberation,

hence the longer time given for the release by the statute. After the debt has run the time set forth in the statute, it is said to be *outlawed*.

In Ontario the time for beginning an action on a specialty contract usually is twenty years. In Manitoba the time on all specialty contracts is fixed at ten years.

In Ontario the time, on certain specialty contracts respecting real estate, is limited to six and ten years, so that the titles of land may be quieted within reasonable time. (See R. S. O. Chapter III.)

Section 4 provides that no person shall bring any action to recover land or rent but within TEN years after the right to bring the action first accrued to some one competent to enforce it.

" " Section 16 provides that no arrears of *dower* shall be recovered by any action for a longer period than *six* years prior to said action. Any action must be brought within ten years from the death of the testator.

Section 17 provides that no arrears of interest or of rent, or in respect to a legacy, shall be recovered by an action but within *six* years next after the same has become due, or after an acknowledgement thereof.

5. Time Begins to Run when a debt is due. A suit may be entered for the collection of a claim, note, debt or demand the next day after it is due, and hence the time of limitation begins to count the day following the due date. In promissory notes, bills of exchange, the next day after the last day of grace; in accounts, the day following the due date of the last transaction, either purchase or payment.

6 Exceptions.—(1) Where there is a disability on the part of the creditor, and he cannot sue the claim when it is due, the time begins to count when the disability ceases. Examples: Persons under 21 years, insane, etc., on the infant's coming of age, or the insane person's becoming sane, the disability ceases. This disability must be in existence at the time when the debt becomes due.

(2) When the debtor lives outside of the Province or State at the time when the debt is due, the six to twenty years, as the case may be—begins to count at the time of his return.

7. Change of Ownership.—A change in the ownership of the claim does not extend the time. If X has a claim on a note against Y four years overdue, and transfers it to Z, it will be outlawed two years after Z becomes owner, just the same as if X was still the owner.

8. Extension of Time.—A debt barred by the Statute of Limitations may be revived:—

(1) By a new promise to pay it, in writing.
(2) By partial payment.

In some of the States a verbal promise to pay the debt is sufficient to revive it. Such is not the case in the Canadian Provinces. In no case will a simple acknowledgement of a debt operate. There must be a direct promise to pay it.

9. New Promise in Writing.—A new promise in writing to pay a debt barred by the Statute of Limitations, will revive it for six years from date (in case of negotiable paper, from due date,) of such promise in writing, or ten to twenty years, if the writing is under seal. As noted in a former section, the statute does not extinguish the debt, but simply suspends the means of collecting it, hence the old debt is a valuable consideration for the new promise to pay it.

10. Partial Payment.—A voluntary payment on account of either principal or interest or both, of a debt barred by the Statute of Limitations, revives it for six years from date of such payment. Such payment must,

(1) Be understood to be on account of the debt, or
(2) Be applied by the creditor on such debt when received from the debtor without instructions as to how it is to be applied.

This voluntary payment on account of the debt is an acknowledgement of the correctness and validity of the claim by the debtor, and of his willingness to pay it.

CHAPTER 12.

DRAWING AND EXECUTION OF CONTRACTS.

- Definition.
- Drawing of Contracts.
- Description of Parties.
- The Signature.
- The Sealing.
- The Witness.
- Signing by an X Mark.
- Reading and Explaining.
- Erasures and Corrections.
- Various Sheets.
- Various Documents.

1. Definition.—The drawing of a contract is the composition and writing of the terms and conditions to be contained in it. The execution includes the signing, sealing and delivery of the document. The principles stated in this chapter apply not only to simple written contracts, but to all formal specialty contracts, such as deeds, mortgages, discharges, etc.

2. Drawing Contracts.—In drawing up contracts of all kinds, it is necessary to be very definite, not only in all the terms and conditions of the agreement, but to have a proper description of the parties to the contract.

3. Description of Parties.—A proper description will comply with the following points ;—

[1] The full name of the person. If he has a half-dozen before the surname, include all of them.

[2] The smallest corporation or municipality in which he resides, which will be,—

[*a*] A Township, or
[*b*] A Village, or
[*c*] A Town, or
[*d*] A City.

[3] The county in which the municipality is situated ;

[4] The Province or State containing the county ;

[5] The person's occupation or calling.

In case he has no particular trade or business, he is usually called a "gentleman."

[6] The *part* he takes in the agreement.

The person agreeing to do work or to sell an article is usually the party of the first part, and the party paying, the party of the second part.

4. The Signature to every contract should be in presence of a witness, who is not interested in the contract, and the witness should sign immediately using such words as "Signed, Sealed and Delivered in the presence of W. J. Wilson." If the document is already signed, the person may acknowledge his signature before the witness. This will do as well as seeing it signed. He will acknowledge in such words as the following "I acknowledge the signature to this document to be my act and deed. "

5. The Sealing.—All contracts of importance should be under seal. After signing, the person should place on the document after his signature a seal ; or if the seal is already there, he should touch the seal, and in either case repeat some such words as "This is my act and deed," or "I acknowledge this to be my hand and seal." It is proper for the person signing to identify his seal permanently by putting his initials on it with pen and ink at the time he signs his name.

6. **The Witness.**—The witness should be :—

[1] A disinterested person ;

[2] Of sufficient age to understand what he is doing.

He should exercise great care, especially where the person executing the document cannot read or write. In all documents to be registered, such as Deeds, Mortgages, Bills of Sale, etc., it is necessary for the witness to verify his witnessing and signature by an affidavit, which may be written on or attached to the document. If two or more witnesses are for different signatures, an affidavit for each must be attached.

7. **Signing by a Mark.**—If a party cannot sign his name, he should *request* some one else to do it for him. The first name should be separated from the surname sufficient to allow a mark to be placed between them, thus ;

his
John **x** Wilson.
mark

The person signing must make the **x** mark himself, or at least touch the pen when it is being guided for him to do it. No matter how simple the agreement signed by an X mark, there should be a witness to it.

8. **Reading and Explaining.**—When a person who cannot read is executing an instrument, it must be read over and explained to him in presence of the witness, so that he fully understands what he is doing. The witness in signing such an instrument should write such words as the following over his signature : "Signed, sealed and delivered, after having first been read over and explained, in the presence of John F. McBride, witness." This furnishes evidence that the maker of the contract was given an understanding of what he was signing before it was done.

9. **Erasures and Corrections** should be made before the execution of a document. If it is necessary to make any erasures or corrections in any instrument, do not use a knife or rubber, or anything that will disturb the surface of the paper ; draw a line through it with pen and ink. If one or more words have to be interlined between either print or writing, use a caret to show where they should be read in.

The *witness* should put his initials on the margin opposite every such erasure correction or interlineation, to indicate that all corrections and changes were made before the executing of the document. If there is any considerable change made, the witness should state the number of words inserted or left out at each place, with his initials.

10. **Various Sheets.**—When a document is written on two or more detached sheets, they should be fastened together and paged before they are signed. Sometimes the fastening is done with a ribbon and a seal put over the tie of the ribbon. Sometimes the witness places his initials on each sheet and mentions the number of sheets with his signature.

11. **Various Documents.**—If an agreement is composed of two or more documents, they may be marked *A. B. C. D.*, etc., and referred to as Schedule marked A., Schedule marked B., etc. Example—A contract for building a house might be a short form, with plans marked A., and specifications marked B. attached, and really forming a part of the agreement. On each separate Schedule there should be an identification indicated by the witness similar to the following ;—"This paper writing is Schedule A, referred to in clause N—of agreement made between X and Y on Jan. 21st, 1898."

GENERAL FORM OF CONTRACT.

MEMORANDUM OF AGREEMENT made and entered into this 22nd day of January, A.D. 1897, BETWEEN John J. Cooper, of the town of Listowel, County of Perth, and Province of Ontario, Student, of the first part, AND James Coghill, of the Town of Listowel, County of Perth and Province of Ontario, Tailor, of the second part ;

WITNESSETH that the said parties hereto do hereby mutually consent, promise and agree to and with each other in manner and form following, that is to say ;

1. That &c. (*here add the particular agreement entered into between the two parties.*)

AS WITNESS the hands and seals of the said parties the day and year first above written.

Signed, Sealed and Delivered in the presence of } John J. Cooper. (L. S.)
James Coghill. (L. S.)

Henry Brown

CONTRACT TO BUILD A HOUSE

BE IT REMEMBERED that on the 16th day of January, A.D., 1897, it is agreed by and between A. B., of the village of Allenford in the County of Bruce, Province of Ontario, Gentleman ;
and C. D., of the village of Hepworth, in the County of Bruce aforesaid, Contractor, in manner and form following, viz :

The said C. D., for the considerations hereinafter mentioned, doth for himself, his executors and administrators, promise and agree, to and with the said A. B., his executors, administrators and assigns, that he, the said C. D., or his assigns, shall and will, within the space of two months next after the

date hereof, in good and workmanlike manner, and according to the best o his art and skill, on Lot 4, Scrope Street, in the town of Parry Sound, well and substantially erect, build, set up and finish one house or messuage, accord ing to the draught or scheme and specifications hereunto annexed, and marked A and B, respectively, and to compose the same with such stone, brick, timber, hardware, paint and other materials as the said A. B. doth, or his assigns, shall find and provide for the same ; in consideration whereof the said A. B. doth for himself, his executors and administrators, promise and agree to and with the said C. D., his executors, administrators and assigns, well and truly to pay or cause to be paid, unto the said C. D., or his assigns, the sum of $900.00, in manner following, that is to say, the sum of $300 when stone and brick work are completed ; the sum of $300 when plastering and carpenter work are completed, and the sum of $300, thirty-one days after the work shall be completely finished; and also that he the said A. B., his executors, administrators or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick, tile, timber, and other materials necessary for building the said house. And for the performance of all and every the articles and agreements above mentioned, the said A. B. and C. D. do hereby bind themselves, their executors, etc. each to the other, in the penal sum of $400 firmly by these presents.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

E. F. Witness — A. B. (L. S.) C. D. (L. S.)

CHAPTER 13.

NEGOTIABLE PAPER.

- Definition.
- Classes of Negotiable Paper.
- The Parties.
- The Principal Debtor.
- The Surety.
- Days of Grace.
- Maturity.
- Computation of Time.
- Maturity on Sunday.
- Maturity on a Legal Holiday.
- The Title.

1. **Definition.**—Negotiable paper consists of written requests or promises to pay certain sums of money, at specified times, to some certain person, or to the bearer. The term *Negotiable* indicates that the ownership of the docu-

ment may be freely transferred from one person to another. Those drawn payable to *bearer*, or to a certain person or bearer, are transferable by *delivery*.

EXAMPLE—A Bank Note. It is payable to bearer (the one who possesses it). It is transferrable by delivery.

Those drawn payable to a person or order are transferrable by *endorsement and delivery*.

2. Classes of Negotiable Paper.—The following are the principal classes of negotiable instruments :—

(1) Promissory notes,
(2) Bills of Exchange, which include { Foreign Drafts, Inland Drafts, Cheques.
(3) Bank Notes,
(4) Deposit Receipts,
(5) Coupon Bonds,
(6) Letters of Credit,
(7) Warehouse Receipts,
(8) Bills of Lading.

And generally—all bills, notes or cheques are negotiable, unless they contain words prohibiting transfer, or indicating an intention that they should not be transferred.

3. The Parties liable to pay negotiable paper are of two kinds, viz. ;—
(1) Principal Debtor ;
(2) Surety.

4. The Principal Debtor is the one who is primarily liable, and the one who (if he is able) must pay the debt. Example—the person signing a promissory note.

5. The Surety is any person who agrees to pay, in case of failure on the part of the principal debtor. Example—An endorser of a note or draft.

6. Days of Grace.—It is an established custom to allow three days, in addition to the time specified in the instrument, for the payment of bills, notes and drafts, unless otherwise provided in the bill, note, etc.

EXAMPLE— A note dated October 4th, at ten days after date, would not be finally payable for $10 + 3 = 13$ days after the 4th of October, that is October 17th.

The number of these days varies in different countries. Six days of grace are allowed in Venice ; at Genoa, 30 days. Days of Grace are allowed on all

notes and personal drafts drawn payable after date, and at or after sight. No days of grace are allowed on negotiable instruments payable on *demand*.

7. **Maturity.**—A note, draft, etc., matures or is due on the third day of grace. It may be paid anytime during business hours on that day. If payable at a bank, it must be paid within bank hours.

8. **Computation of Time.**—When the time to run is expressed in days, the actual number of days must be counted, exclusive of the day on which the note is drawn.

If the running time is expressed in months, actual calendar months are counted, that is from the given date in one month to the corresponding date in the other. Three months from May 12th would be August 12th. Days of grace should be added in each case to find the date of maturity of the note.

EXAMPLE—A note is dated July 7th, drawn at 60 days, when will it mature? It will run $60+3=63$ days.

In July after the 7th there are 24 days.
In August " 31 "
In September there are required 8 "

63 days.

The note matures on September 8th.

A note drawn June 14th at three months, will mature September 17th, computed as follows;—

Counting ahead from June 14th three months, we come to the corresponding day of September, that is the 14th. Add three days of grace, September 17th.

Special attention is necessary when notes are dated at or near the end of a month. A note dated July 31st at two months would mature the same day as one drawn July 30th at two months. The corresponding day two months ahead from July 31 is September 30, that is the last day of the month. Add 3 days grace in each case and the date of maturity is October 3rd.

Suppose four notes are drawn respectively on the 28th, 29th, 30th and 31st of December, at 2 months, (any year not a leap year), they will all mature the same day, viz, March 3rd.

Dec. 28, at 2 months to *corresponding day* Feb. 28th.
" 29, " " " " " 28th.
" 30, " " " " " 28th.
" 31, " " " " " 28th.

add three days of grace—March 3rd.

9. **Maturity on Sunday.**—In Canada and many of the States, a note or draft that falls due on Sunday, is payable on the Monday following.

10. **Maturity on a Legal Holiday.**—Like those maturing on Sunday, they are payable the day following. If a note or draft matures on a Saturday that is a legal holiday, it would not be payable until the Monday following. If a note or draft falls due on a Sunday, and the Monday following is a legal holiday, it is not payable until the following Tuesday.

11. **The Title.**—When ordinary debts are transferred from one person to another, the right of action against the original payee or owner of the debt, by the debtor, is also transferred with the debt. The contrary is, however, true with negotiable paper. When a negotiable instrument is transferred *before it is due*, to a second party, by the original holder, it does not carry with it any right of action, or set off on account of debt fraud, misrepresentation, etc. that could be charged against the first holder. Although the first holder may not be able to collect it at law, the second generally can. The property in negotiable paper is the only kind where a purchaser can have a better title than the seller. "A *bona fide* holder for value without notice, of negotiable paper before due, can collect, regardless of any fraud, theft, deceit, loss, etc., on the part of a previous holder." Such person is called "A holder in due course," or "An innocent holder for value."

Non-negotiable and past due instruments carry with them all defects and infirmities of title when they are transferred.

CHAPTER 14.

PROMISSORY NOTES.

- Definition.
- The Maker.
- The Payee.
- The Innocent Holder for Value.
- Negotiability.
- Form of Negotiable Note.
- " Note Negotiable by Endorsement.
- Form of Non-Negotiable Note.
- Time of Payment by Computation.
- " " Stated with Form.
- Individual Note.
- Joint Note.
- Joint and Several Note.
- Various Forms of Joint and Several Notes.
- Interest-Bearing Notes.
- Legal Interest.

1. **Definition.**—A promissory note is an unconditional written promise by a person to pay a certain sum of money, at a specified time to a certain per-

son or bearer. The student is asked to note specially the points in this definition ;—

(1) There must be an absolute promise.
(2) The promise must be unconditional, *i.e.*, it must not depend on any uncertain circumstance.
(3) It must be in writing.
(4) It must be payable in money.
(5) The time of payment must be stated definitely, or so stated that it may be easily calculated.
(6) There must be a certain sum, either named definitely or easily computed, as in case of addition by interest.
(7) It must be payable to some person, either a person named or any person that *bears* it.

2. The Maker.—The person who signs the note is called the Maker ; he is the principal debtor. He may or may not write out the note, that is immaterial so long as he *signs* the note. The note may be written with pen and ink, or with pencil. Itis not wise, however, to sign a note written in pencil, as it is easily erased and changed.

3. The Payee is the person in whose favor the note is made, or to whom it has been made payable afterwards by endorsement or delivery.

4. The Innocent Holder.—"The *bona fide* holder for value of a note without notice" is a person, not the original payee, who has bought the note and given value for it, not knowing of any defect, fraud, or infirmity in the note. He is also called "*a holder in due course.*" He can collect a note in any case where purchased before it is due, if the parties are worth it. It is no use to set up a plea of fraud, or contra accounts, to him. They would have been valid only against the original payee.

5. Negotiability is best illustrated by examples. We give the following :

6. Negotiable Note—

$60.25

LINDSAY, ONT., JAN. 13, 1897.

Six months after date, for value received,

I promise to pay JOHN SMITH, or *bearer*, at the Bank of Montreal,

Sixty..... $\frac{25}{100}$ Dollars.

WILLIAM BROWN.

The above note is negotiable by delivery The word that renders it so is "*bearer.*"

Note Negotiable by Endorsement—

$85.40

BRANTFORD, JAN. 10, 1897.

Three months after date I promise to pay

JAMES HENDERSON, or *order*, at the Canadian Bank of Commerce,

Eighty Five.....$\frac{40}{100}$ Dollars

Value Received.

ROBERT THOMPSON.

The above note is negotiable by James Henderson writing his name across the back of it, that is endorsing it, or giving his order for the payment of it to another person. The word to be specially noted is "*order.*"

8. Non-Negotiable Note—

$42.50

TRENTON JAN. 16, 1897.

Three months after date I promise to

pay to W. H. COOPER, *only*, at the Merchants Bank, the sum of

Forty two.....$\frac{50}{100}$ Dollars.

Value Received.

SAMUEL PAYMASTER.

The above note contains the word "*only.*" By its face it shows that the original intention between the parties was, that it should not be transferred, hence, if it should be transferred, the new holder would not get any better title than the original holder. Notes are further limited as to payment by the insertion of such a clause as the following after the word "only," *at his office in Trenton and not elsewhere or otherwise.*

9. Time of Payment by Computation.—It will be noticed that in the foregoing three forms, the time of payment is found by computation. The following form is rapidly coming into use. In it the date of payment is defi-

nitely named. The three days of grace allowed, in negotiable paper, must be added to the date mentioned in the note to find the date of maturity.

10. Time of Payment Stated with Form—

$75.00

HAMILTON, JAN. 24, 1897.

On or before the tenth day of March, 1897,

I promise to pay to the order of A. BENSON, at the Traders Bank,

Seventy-five ..... Dollars.

Value Received

F. A. WOODS.

11. Individual Note.—A note made by *one* person is called an individual note. A partnership note, though filled up "*we promise to pay;*" is an individual note, as the firm or company acts as one person. The foregoing forms are individual notes.

12. Joint Note.—A joint note is one in which two or more parties promise jointly to pay a sum of money, In a suit-at-law to enforce payment it is necessary to sue the parties jointly.

(FORM)

$135.50

ST. CATHARINES, JAN. 18, 1897.

Sixty days after date we jointly promise to pay

WILLIAM ROBERTSON, or order, at his office,

One Hundred, and Thirty-five ..... $\frac{50}{100}$ Dollars.

Value Received.

THOMAS WILSON,

HENRY MANDERS.

13. Joint and Several Note is one in which the makers agree to pay it jointly, and each one severally promises to pay the whole note himself if necessary. A suit-at-law to recover payment may be entered against any one of the parties, or against each one separately, or against all jointly.

The following is a common form :

$165.25

COLLINGWOOD, JAN. 26, 1897.

Sixty days after date we jointly and severally promise to pay GEORGE ROGERS, or order at the Bank of Toronto,

One Hundred and sixty-five..... ....$\frac{25}{100}$ Dollars.

Value Received.

H. J. HILL,

H. J. WITHROW.

14. Various Forms of Joint and Several Notes.— The same thing is accomplished by using the words "we, and each for himself, promise to pay, etc."

A joint and several note may also be made by drawing the note "I promise to pay." When two or more persons sign a note of this kind, each one becomes a principal debtor for the whole amount.

15. Interest-bearing Notes.—If nothing is said in a note regarding interest, no interest can be collected on it for the time it runs,—from its date to maturity. If it is not paid when due, Six per cent. is collectable for the time elapsing between the due date and the date of payment.

A note may be drawn,

(1) To bear a certain rate from date till paid. To effect this a clause similar to the following should be inserted ; "With interest at Eight per cent. per annum, from date as well after as before maturity and until paid."

(2) To bear different rates before and after maturity, the interest clause should read as follows : "With interest from date till maturity at Eight per cent. per annum, and Twelve per cent. per annum after maturity till paid."

(3) To bear a higher rate after it is due than Six per cent. insert a clause as follows : "With interest after maturity until paid at One per cent. per month."

16. Legal Interest.—In many places there are laws prohibiting lenders from charging a rate higher than fixed by law. In Canada, the legal rate is *Six per cent.* This is only a provision enabling any person to collect Six per cent. on a debt or note, *after it is due*, where no agreement has been

made regarding interest. This is only chargeable on negotiable paper from its due date, and on accounts from the date on which they are rendered. The law does not provide that no higher rate can be agreed upon. On the contrary two persons may agree as to any rate between themselves, and the law will not interfere. The price of the use of money (Interest) fluctuates according to, and depending upon,

(1) The value of the use of money.

(2) The supply and demand.

(3) The value of the risk of losing it on account of poor security.

In Ontario, the debtor must have notice that interest will be charged on an overdue account, or it cannot be collected in Division Court, which is commonly called "The poor man's court". It is necessary to prove in court that notice has been given; and interest could only be collected from the date notice was served. This applies only to accounts, and not to negotiable paper.

CHAPTER 15.

SPECIAL NOTES.

- Accommodation Notes.
- Form of Accommodation Note.
- Accommodation Notes Like Customers' Notes.
- Customers Notes, *vs.* Accommodation Notes.
- Lien Notes.
- Forms of Lien.
- Authority for Liens.
- Provisions of the Act.
- The Lien Note Law in Manitoba.

1. **Accommodation Notes.**—When one person lends his name to another to enable the second party to borrow money on the strength of the financial standing of the first party, the note thus made is called an accommodation note.

If Alex. Wilson is going to lend his name to Thos. Wolfe, Thos. Wolfe makes a note in favor of Wilson, and Wilson writes his name across the back of it (endorses it) thus :—

2. Form of Accommodation Note—

$200.00

ORANGEVILLE, JAN. 27, 1897.

Three months after date I promise to pay to the order of ALEXANDER WILSON, at the Merchants Bank, Orangeville, the sum of Two Hundred.....Dollars.

Value Received.

THOMAS WOLFE.

(Back of Note.)

Alexander Wilson.

It will be noticed that the above form does not differ from the ordinary note. It is easy for Mr. Wilson to write his name there, but not so easy to pay it should Mr. Wolfe fail to put up the necessary amount. The accommodated party is the principal debtor, hence he should pay the note at maturity. The holder may enforce payment by the endorser, but the accommodated person cannot enforce payment from the person lending his name.

3. Accommodation Notes Like Customers' Notes—Sometimes Accommodation Notes are made in such a way as to show the person lending his name as the principal debtor, and the person borrowing the money as the surety. In the case of Wilson and Wolfe in the former section, the places would be reversed, Wilson signing the note as maker and principal debtor, and Wolfe endorsing it and borrowing money on it by discounting it like a note received in the regular course of trade from one of his customers.

This plan is sometimes adopted to keep the banker in ignorance of the act that he is discounting accommodation paper, and of the financial circumstances of the borrower. This is usually an unwise proceeding, as the banker

could scarcely be expected to help a person through a "tight place" with a temporary loan if he had been kept in ignorance as to the real nature of former transactions. A business man who is always perfectly frank with his banker can expect financial assistance in time of need.

4. Customers' Notes, vs. Accommodation Notes.—The endorsement of customers' paper is very different from endorsing accommodation paper. When you endorse your customer's paper, you get the value of it from the bank, and use it in your own business, paying liabilities, or buying goods, and you are really not running any additional risk—you have already incurred the risk of losing when you made the sale to your customer.

When you lend your name to another on accommodation paper, 1st, you get no value; and 2nd, you incur a liability to pay it; 3rd, you place the contingency of loss altogether in the hands of a third party, and altogether beyond your own control and management. Hundreds of men are ruined financially every year by this simple process.

5. Lien Notes.—A lien note is one that is given for some article which is being purchased, but where the *ownership* of the article does not pass to the person buying until all payments have been made. The purchaser, however, has the use of the article, and is given possession of it. N.B.—Lien Notes have been held not to be promissory notes nor negotiable instruments.

Receipts or agreements sometimes take the place of notes. Occasionally both a lien agreement and a lien note are made.

Lien notes are in common use among the agents of manufacturers of organs, pianos, sewing machines, agricultural implements, machinery, etc.

6. Forms of Lien Notes.—Form payable in monthly instalments.

$30.00 No. 36275.

LISTOWEL, ONT., JAN. 28, 1895.

On the 28th day of each month hereafter for Six Months consecutively, I promise to pay to MESSRS. BONNET & BOWYER, at their office, the sum of Five Dollars, the whole amounting to Thirty Dollars, the first of such payments to be made on the 28th day of February next, Interest to be paid at the rate of Ten per cent. per annum.

In the event of Sale or other disposal of my land or personal property, or of default in making any of the above payments at the time mentioned, the whole amount of this Note shall thereupon become due and payable forthwith. The title and right to the possession of the property for which this Note is given, one "Forest King" Cooking Stove No. 9. manufactured by William Copp, of Hamilton, shall remain in BONNET & BOWYER until this note, or any renewal thereof, is fully paid.

Witness, D. BARBER. THOMAS WILSON.

Form of ordinary Lien Note:

$100.00 DUE, May 2. No. 36274.

MOUNT FOREST, ONT, JAN. 28, 1897.

Three months after date I promise to pay H. B. HARRISON, or order, at his Office, the sum of ..... One Hundred..... ....Dollars, for Value Received, with Seven per cent. interest until maturity, and One per cent. per month after due till actually paid; and if payment is enforced, I will not dispute the Jurisdiction of the Court at Mount Forest; and I further agree that if I offer any of my goods, Chattels or Real Estate for sale, with the intention of leaving the Province, this Note will forthwith become due and payable.

The title and right to the possession of the property for which this Note is given viz: One "Bell" Organ, Style D, No, 6829. is, shall be and continue in H. B. HARRISON, the lawful holder of this Note, or his heirs or assigns, until it, or any renewal thereof is paid, and he or they may resume possession and resell or convert to his or their own use, and not be liable to refund any money or valuables that I may have paid, and I will pay all expenses, interest and deficiency, and the said article shall not be removed or secreted, and the lawful holder of this Note can take forcible possession, without recourse to law, and I will give no hindrance. I acknowledge having received a copy of this Lien Note.

Witness, THOMAS SWORD. WILLIAM MANDERS.

7. **Authority for Liens.**—On the first day of January, 1889, an Act passed in the session of the Ontario Legislature for 1888, came into force. We give a few of the principal provisions :—

Sec. 1 provides that the note, receipt or agreement in writing will hold the property in the case of manufactured goods and chattels, even if sold or mortgaged by the purchaser to other parties, if the name and address of the seller is painted, printed, engraved on, or attached to the article.

Sec. 2 provides that the purchaser is entitled to full information as to his claims within five days of his asking for it.

Sec. 3 provides that goods re-taken by the seller may be redeemed, by the purchaser paying arrears, interest and costs within twenty days from the time possession was re-taken.

Sec. 4 provides that if goods worth $30 or more are re-taken, five days notice must be given the purchaser before they are sold.

Sec. 5 and 6 provide that this Act shall not apply to ordinary household furniture; it will apply to organs, pianos, sewing machines, implements, etc., and that a copy of the lien may be fyled, at a cost of ten cents, with the Clerk of the County Court.

Sec. 7 requires the seller to leave a copy of the lien with the purchaser of the article within twenty days.

8. The Lien Note Law of Manitoba.—The law regarding Lien Notes for the Province of Manitoba is different from that in Ontario. "The Act respecting Lien Notes," Revised Statutes of Manitoba, Chapter 87, is subjoined as follows :—

(1) This Act may be cited as the "Lien Notes Act."

(2) On and after the twenty-seventh day of July in the year one thousand eight hundred and eighty-six, receipt notes, hire receipts and orders for chattels given by bailee of chattels, where the condition of the bailment is such that the possession of the chattel should pass without any ownership therein being acquired by the bailee, were and shall be only valid in the case of manufactured goods or chattels which at the time the bailment is entered into, have the manufacturer's name printed, painted, or stamped thereto; and no such bailment shall be valid unless it be evidenced in writing, signed by the person thus taking possession of the chattel. 46 V., c. 32 S. L.

(3) Every manufacturer and his agents shall forthwith, on application, furnish to any applicant full information respecting the balance due on any such manufactured goods or chattels, and the terms of payment of such balance; and in case he or they refuses or refuse, neglects or neglect to furnish the information asked for, such manu facturer or agent shall be liable to a fine of not less than ten dollars nor more than fifty dollars, on conviction before any justice of the peace.

CHAPTER 16.

Bills of Exchange.

- Definition.
- An Inland Bill or Draft.
- A Foreign Bill.
- A Cheque.
- Division as to Time.
- The Demand Draft.
- The Drawer.
- The Drawee.
- The Payee.
- The Sight Draft.
- Acceptance General, Partial, Qualified.
- Foreign Bills in Sets.

1. Definition.—"A Bill of Exchange is an unconditional order in writing, addressed by one party to another, signed by a person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determin-

able time in the future, a certain sum of money, to or to the order of a specified person, or to bearer." Bills of Exchange have been divided into three classes :—

Inland Bills, commonly known as Drafts;
Foreign Bills, commonly known as Bills of Exchange ;
Cheques on Banks or Bankers.

2. **An Inland Bill or Draft** is one that is drawn and payable within one country ; for example, X of Chicago draws on Y of New York for $600, or A of Toronto draws on B of Hamilton for $125.

3. **A Foreign Note** is one drawn in one country and payable in another. A in Toronto draws on B in Paris, (France,) for 6500 francs.

Bills of Exchange, (Foreign Bills) are usually drawn up in sets of two or three. The original being called the "First of Exchange," the copies being called the Second of Exchange, Third of Exchange, etc.

4. **A Cheque** is a Bill of Exchange in form and effect, drawn on a bank or banker. It is drawn without mention of time of payment, consequently and by usage, is payable immediately.

5. **Division as to Time.**—Drafts may be divided into four kinds, according to the way in which the time they have to run is counted, and the due date ascertained as follows :—

(1) Demand Drafts ;
(2) Sight drafts ;
(3) Drafts payable a specified time after sight ;
(4) Drafts payable a specified time after date.

6. **The Demand Draft** is one drawn payable on demand, that is whenever it is presented.

$62.24 DOVER, Ont., Jan. 15, 1897.

demand pay to the order of J. W. Masson, at the Traders Bank, the sum of Sixty-two $\frac{24}{100}$ dollars, value received, and charge to the accouut of

To HENRY SWIFTFOOT, J. W. FROST.
Colborne, Ont.

The above draft is payable on presentation. There is no time for it to run. It does not require acceptance.

7. The Drawer is the name given to the person who "makes" or "draws" the draft. The party who signs his name at the bottom in the above draft, J. W. Frost, is the drawer.

8. The Drawee is the party on whom a draft is drawn, or to whom it is addressed—that is the person who pays it. In the above demand draft, Henry Swiftfoot is the drawee. The Drawee's address should always be on the draft, so that the Banker may know where to present it for acceptance and payment.

9. The Payee is the person in whose favor the draft is made. The person that receives the payment, J. W. Masson in the above demand draft, is the payee.

10. The Sight Draft is one that is drawn payable at sight. It is not payable immediately, as is the demand draft. There are three days of grace, after acceptance, before it matures.

FORM.

(To be written or stamped in Red across face of Draft.)

Accepted. Payable at Molsons Bank, Meaford. Feb. 4, 1897.
Jas. H. Little.

$86.40 BARRIE, JAN. 30, 1897.

At sight pay to the order of Joseph Lang, at the Merchants Bank, Barrie, the sum of Eighty-six $\frac{40}{100}$ Dollars value received, and charge to the account of

JOHN RUTHERFORD.

TO JAS. H. LITTLE, ESQ.,
Meaford, Ont.

The above draft was drawn Jan. 30th. was accepted Feb. 4th. and would mature Feb. 7th. The three days of grace count after the date of acceptance.

11. Acceptance General.—A Bill is said to be *accepted generally* when the drawee agrees to all the conditions in the bill. An acceptance that changes the place of payment is not conditional, but general.

Example of General Acceptance.

Accepted. Payable at Farmers Bank.

J. H. LITTLE.

12. Acceptance Partial.—A Bill is partially accepted when the acceptor only agrees to pay a part of the amount.

Example of partial acceptance,

Accepted for Thirty dollars, payable at Farmers Bank.

J. H. LITTLE.

This placed on a draft for $86.40 would be a partial acceptance.

13. Acceptance Qualified.—A qualified acceptance is one in which the acceptor does not agree to all the conditions in the bill, but varies them.

14. Foreign Bills in Sets.—Foreign Bills are commonly called "Bills of Exchange," though the title really includes Inland Bills as well. The Foreign Bills are usually drawn up in sets of two or three. This is done by making two or three copies of the same bill, and indicating in each that there are other copies, and the number of such copies. The payment of one copy cancels the others. The reason bills are drawn in duplicate is to make provision in case of one getting lost when sent a long distance. It is customary to send one by one boat, or line, or route, and another by another boat, or line, or route.

FORM.

£650. TORONTO, Dec. 20, 1897.

At sight of this my *first* of Exchange, (*second and third of the same date and tenor unpaid,*) pay to the order of W. E. Gladstone, Six Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERT BENTLY.

TO GLEN, MILLS & CO.,
London, England.

2nd Form, Same as 1st, except to put numbers in italic type in the following order *second, first and third.*

3rd Form. Same as 1st, except to put numbers in italic type in the following order, *third, first and second.*

CHAPTER 17.

Bills of Exchange—Acceptance.

- The Acceptance.
- Place of Payment.
- Principal and Surety.
- Time Draft Drawn after Sight.
- Time Draft Drawn after Date.
- Different Due Dates.
- Dating of Bills and Acceptances.
- Neglect to Date Acceptance
- Qualified Acceptances.
  - Conditional.
  - Qualified as to Time.
  - Partial.
- Presentation for Acceptance.
- Slips of Instruction.

1. **The Acceptance.**—The foregoing draft, Chapter 16, Section 10, is drawn by John Rutherford in favor of Joseph Lang. It is not binding on Jas. H. Little in any way, until he has signified his willingness to pay it by writing the word "accepted" across the face of it, and his signature. Any other word or words that convey the same meaning will do just as well, but the above is the customary form. The date in this acceptance is necessary, as the time does not begin to count until the draft has been "seen" by J. H. Little. The evidence of this sight of the draft is the acceptance. The above draft matures Feb. 7, 1891. When a draft is accepted it is said to be "*honored,*" and when acceptance is refused, it is "*dishonored.*"

An acceptance may be classified as follows:

(1) General,

(2) Qualified
- Conditional.
- Partial.
- Qualified as to time.
- Acceptance by one or more drawers, but not of all.

2. **Place of Payment.**—In the acceptance, page 62, Sec. 10, Jas. H. Little has mentioned a place where he desires it made payable. This is a general acceptance, unless it were expressly stated in the draft "and not elsewhere."—viz. At The Merchants Bank, Barrie. In such a case the acceptance for Molsons Bank, Meaford, would be *Qualified* and not *General.* Business men, for convenience, usually make their drafts payable at the bank where they do business, or at their own office. This saves the remitting to different banks to retire their drafts when due.

3. **Principal and Surety.**—In the foregoing draft, page 62, Section 10, John Rutherford is the principal debtor until it is accepted by Mr. Little, then J. H. Little, becomes principal debtor, and Jno. Rutherford becomes surety.

4. Time Draft Drawn after Sight.—In this draft the time begins to count from the date of the acceptance. There are three days of grace after the sixty days mentioned in the draft, have expired.

FORM.

(To be written or stamped in Red ink across face of Draft.)
Accepted. Payable at the Merchants' Bank, Kincardine, Ont.
Mar. 9, 1897.
JNO. TOLMIE.

$47.25 MILTON, Mar. 4, 1897.

Sixty days after sight pay to the order of W. A. McLean & Co. Forty-seven.....$\frac{25}{100}$ Dollars, value received, and charge to the account of

D. MELVILLE & CO.

To JOHN TOLMIE, ESQ.,
Kincardine, Ont.

5. Time Draft Drawn after Date.—In the following draft, time begins to count from its date, regardless of the time of acceptance, hence an acceptance on this draft does not require a date.

FORM.

(To be written or stamped in Red across face of Draft.)
Accepted Payable at the Federal Bank here.
J. W. SIMPSON.

$92.80 FLESHERTON, Mar. 4, 1897.

Sixty days after date pay to JOHN DICKSON or order Ninety-two.....$\frac{80}{100}$ Dollars, value received, and charge to the account of

JOSEPH MILLIGAN.

To J. W. SIMPSON,
Markdale, Ont.

6. Different Due Dates.—The forgoing time drafts are drawn Mar. 4th at 60 days, both drawn the same day, and have the same running time, yet there will be five days of difference in their due dates, because the last one begins to count the sixty days immediately, whereas the former one is five days before it is accepted, and time only begins to count from the time of acceptance.

7. Dating of Bills and Acceptances.—A bill is valid though dated back, or forward, or on a legal holiday, or on a Sunday.

8. Neglect to date Acceptance—If, by neglect, the date be left out of an acceptance where it is required, the holder of the draft may insert the date on which the acceptance was made, or any subsequent date to carry out the intention of the parties, and give effect to the document.

9. Qualified Acceptance.—When an acceptance in express terms varies the effect of the draft as originally drawn, it is called a qualified acceptance.

Qualified acceptances may be

(1) Conditional;
(2) Partial;
(3) Qualified as to time;
(4) The acceptance of one or more of the drawees, but not of all.

10. Conditional Acceptance is one in which the acceptor makes payment dependent upon the fulfilment of some condition contained therein.

EXAMPLE:—Accepted, payable out of the United Presbyterian Church Building Fund.

J. Harris, Treasurer.

11. Partial Acceptance is one in which the acceptor agrees to pay part only of the amount for which the draft is drawn. If a draft were drawn for ninety dollars, the following acceptance would be partial.

EXAMPLE:—Accepted Feb. 14, 1891, for Sixty Dollars.

H. MANDERS.

12. Acceptance Qualified as to Time is one in which the date of maturity is changed, as where a draft is drawn payable at sixty days' sight and is accepted payable at ninety days sight. Notice, however, that such an acceptance varied from the original conditions of the draft, and that the drawer and all previous endorsers are discharged, unless their assent, either expressed or implied, is obtained either before or after the acceptance. Where a drawer or endorser receives notice of a qualified acceptance, and does not within reasonable time express his dissent, he shall be deemed to have assented thereto.

EXAMPLE:—The following acceptance placed on a thirty-day draft would be qualified as to time.

Accepted Feb. 4, 1891, payable at sixty days sight. ROBT. MARR.

These remarks do not apply to partial acceptance. It is not necessary in their case to obtain the drawer's and endorser's consent, but they must be notified.

The holder, may if he likes, refuse a qualified acceptance, and treat the bill as dishonored, in which case he must protest the bill.

Acceptances containing a local qualification are not considered qualified acceptances, and the foregoing rules do not apply to them.

13. Presentation for Acceptances.—The following drafts must be presented for payment, or the drawer and endorsers will be discharged.

(1) Drafts drawn at sight and after sight;

(2) Drafts payable elsewhere than at the residence or place of business of the drawer;

(3) Drafts that expressly stipulate that they shall be presented for acceptance.

14. Slips of Instructions.—When drafts are forwarded for Acceptance in the regular course of trade, slips of instruction, to the bank or banker, are usually attached to them.

No Protest for Non-Acceptance.

PLEASE DETACH BEFORE PRESENTING.

Sometimes the initials of the above, or other words of instructions only, are used, N. P. N. A., meaning no protest for non-acceptance.

N. P. means no protest, that is, do not protest in any case, either for Non-Acceptance or Non-Payment.

The following form of slip is sometimes attached for use in case a draft is not honored.

IF REFUSED, CROSS REASON THUS X

Will pay. less cash discount	Written to, but no response.....
Cannot pay at present	
Will not pay exchange.....	Cannot be found.....
No authority to draw.....	Wants more time.....
Has contra account.....	Has remitted.....
Goods not received	Already paid.....
Refused, no reason.....	Not in town.....
Does not owe this.....	Closed up.....
Will write drawer.....	Will remit.....
Amount incorrect.....	Failed.....

DETACH THIS WHEN DRAFT IS ACCEPTED.

15. Time of Acceptance.—A draft may be protested for non-acceptance the day it is presented for acceptance, unless a demand is made by the drawee for time. If this demand is made at the time of presentation he can have two days in which to accept, before the holder can have it protested.

CHAPTER 18.

NEGOTIATION OF BILLS, NOTES, &c.

I. Negotiation.—The negotiation of a note, draft, cheque, or bill of exchange consists in the transferring of it from one to another, so as to make the transferee the holder thereof.

(1) A bill payable to *bearer* is negotiable *by delivery*, as it is payable to whoever carries it.

(2) A bill payable to *order* is negotiable by *endorsement* of the holder, and completed by *delivery*, briefly stated endorsement and delivery.

2. Requisites of Endorsement for negotiation :

(1) It must be made on the bill itself and signed by the endorser. A signature alone is sufficient.

(2) It must be an endorsement of the entire bill, and not of a part of it.

(3) If payable to two or more persons, not partners, all must endorse, unless one has authority to endorse for all.

(4) It is usually written across the back of the instrument.

3. Purposes of Endorsement.—Endorsements are made :

(1) For the purpose of negotiation ;

(2) For additional security, as in case of accommodation paper, and discounted by banks and individuals ;

(3) For the purpose of acknowledging a partial payment of the instrument.

4. Methods of Endorsement.—The following are common ways of endorsing :—

(1) Blank Endorsement.

(2) Full Endorsement.

(3) Restrictive Endorsement.

(4) Qualified Endorsement.
(5) Full Qualified Endorsement.
(6) Endorsement for Specific Purposes.
(7) Endorsement for Guarantee.

The following diagrams show the five common forms of endorsement as they would appear on the back of notes or bills:

(*In Blank.*)	(*In Full.*)	(*Restrictive.*)	(*Qualified.*)	(*Full Qualified.*)
John Bayne.	Pay to W. H. Dunn, or order, John Bayne.	Pay to W. H. Dunn, only. John Bayne.	Without recourse to me. John Bayne.	Pay to W. H. Dunn, or order, without recourse John Bayne.

5. Blank Endorsement is simply signing the name unconditionally, in blank, without any accompanying words, across the back of a note, draft, cheque, etc.

Effect on Note.—It is afterwards a negotiable instrument, just as if it were payable to bearer.

Effect on Endorser—The endorser is held responsible for the payment, in case the maker fails to pay it.

6. Change of Blank Endorsement.—By the Bills of Exchange Act of 1890, 53, Vic., cap. 33, s. 34, s.s. 4, respecting bills of exchange and promissory notes, any holder of a note, etc., endorsed in blank, may write above the blank endorsement, any words to make a special endorsement of it, so as to make the bill payable to himself or to any other person specially. A holder of a note or other negotiable instrument that is endorsed in blank may change it to any other form of endorsement by writing such form above the endorsement. The blank endorsement is the highest form of endorsement, hence any restriction placed on it by change of form does not enlarge the contract or liability of the endorser.

7. Full Endorsement.—The form.

(Form 1.) Pay W. H. Dunn, or order.
JOHN BAYNE.

(Form 2.) Pay W. H. Dunn.
JOHN BAYNE.

Effect on Note.—The above endorsement only passes the title of the bill to W. H. Dunn. In order for Dunn to pass a title to some other person he must endorse it.

Effect on Endorser.—Mr. Bayne would be held responsible for payment of the above bill, in case of the failure of the maker.

8. Restrictive Endorsement.—

(Form 1.) Pay W. H. Dunn, only.
JOHN BAYNE.

(Form 2.) Pay W. H. Dunn only at Henry Thompson's office, and not elsewhere or otherwise.
JOHN BAYNE.

Effect on Note.—Such endorsements as the above pass the title of the bill from Bayne to Dunn, and restrict the negotiation of it afterwards. It gives Dunn no power to transfer. If it were afterwards negotiated, the subsequent holders would have to take it subject to all defects in its title, and to all offsets, etc., between the parties to such endorsement, as on its face, it shows evidence that some other transactions may be depending on it, and that the intention of the parties is that no further negotiation take place.

Effect on Endorser.—He is held responsible for payment in case of failure of maker.

9. Qualified Endorsement. —

(Form.) Without recourse to me.
JOHN BAYNE.

The above endorsement is for the purpose of negotiation only, as it does hold the endorser responsible for payment, and it makes the bill as negotiable as if it were payable to bearer.

10. Full Qualified Endorsement.—

(Form.) Pay W. H. Dunn or order, without recourse to me.
JOHN BAYNE.

Effect on Note.—By this form of endorsement the note is transferred from Bayne to Dunn.

Effect on Endorser.—It does not hold him responsible for payment in case the maker fails.

11. Summary of Endorsements, Forms, Liabilities, &c.—

NAME.	FORM.	EFFECT ON BILL.	EFFECT ON ENDORSER.
Blank.	John Bayne.	Makes it negotiable.	Holds him responsible if maker fails.
Full.	Pay W. H. Dunn or order John Bayne.	Transfers title of bill from John Bayne to W. H. Dunn, subject to transfer by him again.	Holds him responsible if maker fails.
Restrictive.	Pay W. H. Dunn only John Bayne	Transfers title of Bill to W. H. Dunn only—not intended for further transfer.	Holds him responsible if maker fails.
Qualified.	Without recourse to me John Bayne	Makes it negotiable.	Does not incur any liability on him.
Full Qualified.	Pay W. H. Dunn or order, without recourse to me. John Bayne.	Transfers title of bill to W. H. Dunn, subject transfer again by him.	Does not incur any liability on him.

CHAPTER 19.

SPECIAL ENDORSEMENTS.

1. Endorsements for Specific Purposes.—The following are useful forms.

Forms of Endorsement for bills sent for collection :

(Form 1.) For collection and remittance to Bank of Montreal, Toronto.
D. BROUGH, Manager.

(Form 2.) For collection only on account of
MILLER & THOMPSON.

Forms for Endorsement on bills sent for discount :

For discount only to credit of
MILLER & EVANS.

Forms for Cheques, Bank Drafts, etc., sent for deposit :

(Form 1.) For deposit only to the credit of

J. H. LITTLE.

(Form 2.) Credit my account.

R. J. DOYLE

(Form 3). For deposit only in the Trader's Bank, to the credit of
ANDERSON & WILKINSON.

2. Endorsement for Identification of Payee—The following is the form for identifying the payee of a bill. Suppose the bill were in favor of John Brown, who is not known at the bank.

(Form.) John Brown is hereby identified by

THOMAS THOMPSON & SONS.

If an Endorsement in blank were put on the bill in place of the above, the endorser would guarantee

(1) The payment of the bill ;

(2) The identity of the payee;

whereas in most cases of identification, only the identity of the payee is requested, and no guarantee required of either the validity of the bill or the financial ability of the maker to meet it.

3. Endorsements of Guarantee of Payment—When bills are subject to protest, this may be saved by the endorser writing a form of guarantee over his signature, waiving protest.

(Form 1.) I hereby guarantee payment of within note, and waive protest and notice of protest.

WILLIAM BROWN.

The above is open to objection, as there is a contract made without a consideration.

The following are better forms, the second being for a *nominal* consideration, and the third for an *acknowledged* consideration:

(Form 2.) In consideration of one dollar, I hereby guarantee payment of within note, and waive protest and notice of protest.

WILLIAM BROWN.

(Form 3.) For value received, I hereby guarantee payment of within note, waive protest and notice of protest.

WILLIAM BROWN.

4. Guaranteeing Collection—The following form guarantees collection only. See further the chapter on "Guarantee and Suretyship."

(Form.) For valued received I hereby guarantee collection of the within.

WILLIAM BROWN.

5. The Endorser's Contract—Every endorser agrees with his endorsee, and all subsequent holders and endorsees, in good faith :

(1) That the bill and its signature or signatures previous to his own, are genuine.

(2) That he has a good title to the bill.

(3) That he is competent to contract.

(4) That the maker and endorsers previous to himself, are competent to contract.

(5) That the maker will pay the bill at maturity.

(6) That he will pay the bill, in case the maker or any endorser previous to himself, fails to pay it.

6. Endorsement when the name does not correspond with the signature.—If the name of the payee of a note, cheque or bill that is to be endorsed is improperly written or incorrectly spelled, it is well to write an endorsment in the form the name appears and follow it with the regular signature. EXAMPLE—Suppose J. M. Wilson should receive a cheque drawn to "James Wilson," he should endorse James Wilson first and immediately under it his usual endorsement, J. M. Wilson.

If a cheque is drawn in favor of Mrs. Oliver C. Brown, she should endorse it first, Mrs. Oliver C. Brown, and under it write her proper signature, Mrs. Mrs. Mary Brown. A married woman or widow should always sign with her own christian name and not with that of her husband, either living or deceased.

7. Contract Among Endorsers—Where two or more endorsements appear on a bill, they are presumed to be made in the order in which they appear. It will be noticed where two or more endorsements appear on a bill, the last one endorses on the strength of the guarantee of all before him. The first endorser takes the entire responsibility of the guarantee ; the second endorser only guarantees in case of failure of maker and first endorser, and so on with other endorsers. If A makes a bill in favor of B, B endorses to C., and C. to D., and D. to E. In case of A's failure to pay, if E collected it from D, he (D) could collect from C, or B; but if E collected from B in the first place, B could not collect from C, or any one who endorsed after him, as when he guaranteed the payment, he assumed all responsibility, not knowing any one would endorse after him.

8. **Restricting Negotiable Bills.**—Where a bill is negotiable in its origin, it continues to be so during its currency, unless endorsed with restrictive endorsement. If a holder in due course endorses it restrictively, it continues subject to whatever restrictions are put on it in the endorsment, unless again endorsed in Blank.

9. **Negotiation of Overdue Bills.**—It has been mentioned in a previous section, that when a bill passes into the hands of "*An innocent holder for value,*" it passes with a good title, whether or not the previous holder had a good title. This applies only to bills before they are due. A bill negotiated after it is due carries all its defects with it. In other words, the "Innocent holder of value" cannot get a better title than the previous holder had. It is overdue, and such breach of faith is supposed to be warning to any purchaser of it that something is wrong with it. The expression "*bona fide* holder," or "holder for value, before due, without notice," is sometimes called "A holder in due course," meaning that he has received it in the regular course of business or trade.

10. **Patent Right Bills.**—All notes, drafts, etc., given in payment for a patent right, or an interest in a patent right, must have the words "given for patent right" printed or written across the face thereof, otherwise they are void. The penalty for every holder who knowingly transfers such a note he knows was taken for a "patent right," is one year's imprisonment, or not exceeding $200 fine. All notes given for "patent right" carry with them all their infirmities—"the innocent holder of value" receives no better title than the first holder.

CHAPTER 20.

CHEQUES.

- Definition.
- Form.
- Use of Cheques.
- Usage by Stock Companies.
- Negotiability.
- Forged Cheques.
- Local Payments.
- Presentment Within Reasonable Time.
- Certification, or Marking "Good."
- Payment of "Raised" Cheques.
- Revocation of Payment.

1. **Definition.**—A Cheque is a Bill of Exchange, drawn on a Bank, payable on demand. See Bills of Exchange Act, Sec. 72.

In Canadian and American banking, it is an order for the payment of a sum of money from funds of the drawer on deposit, in the hands of the banker.

2. Form.—

No. 626. STRATFORD, March 4, 1897.

Merchants Bank of Canada,

Pay James Sutherland or order Three Hundred and Twenty dollars.

$320 $\frac{00}{100}$ D. MORRISON.

It will be noticed that the cheques do not differ much in form, from ordinary drafts, except that they are always drawn on a bank or banker.

3. Use of Cheques.—The practice of making payment by cheque is daily growing. The giving of a cheque instead of cash—

(1) Saves time in counting ;

(2) Saves any risk of mis-counting ;

(3) Saves from liability of loss of money by theft or robbery ;

(4) When a cheque is returned to the drawer after it is paid, it is the best voucher or receipt or evidence of payment a man can have, as the payment was made by a disinterested party—the Bank.

Hundreds of thousands of dollars change hands daily in the cities by cheque, without the cash being handled, and without risk.

4. Usage by Stock Companies, etc.—Many Stock Companies, Corporations Associations, and Manufacturers, etc., lay down the rule that every payment be made by cheque. They deposit all their receipts of Cash, Cheques, Bank Drafts, Post Office Orders, etc., daily. A much closer watch can be put on the cashier or confidential clerk when no payments are made except by the bank. The officers of the company always have the cancelled cheque as a receipt for their payment.

5. Negotiability.—Cheques, like Bills of Exchange, are subject to the same laws and conditions of endorsements and transfer as Bills of Exchange. Banks usually have their blank forms printed payable to *bearer*, as they wish to avoid the responsibility of paying to the wrong payee.

Most business men change the word *bearer* to *order* before signing. In making this change in the form, it is proper for the person signing to put his initials beside the change. It is not safe to do business with cheques payable

to bearer, as, should one be dropped or mislaid, it is as negotiable as a bank note, and may pass into the hands of an innocent holder for value, and be paid by the bank, and lost to the proper holder.

6. **Forged Cheques.**—If a bank pays a forged cheque, it must stand the loss, unless it can be shown that the drawer of the cheque is so indifferent, careless and variable in his signature and methods of drawing, that it was impossible to tell the forged from the genuine cheque by exercise of due diligence on the part of the bank. Then the erratic and versatile drawer would be at the loss.

7. **Local Payments.**—Cheques are generally used for making local payments, and not for sending by mail or otherwise to distant parts in payment of debts. Occasionally banks grant large firms and corporations, whose business transactions cover a large section of country, the right to have their cheques paid at par, at any branch of their bank without any charge for exchange on them.

8. **Presentment Within Reasonable Time.**—When a cheque is given in payment of a debt, it is not intended by the drawer that the payee shall keep it six months or a year before collecting it. It should be presented within a reasonable time. In determining reasonable time, regard must be had to the custom at the place, and to special circumstances of the case. In some places reasonable time has been decided to be 24 hours.

9. **Certification or Marking "Good".**—A cheque is not commonly "accepted" as a draft is, as it is payable immediately on presentation at the bank. It sometimes happens that a person wishes to send one to a distance, or that the payee does not know, or is doubtful of the financial standing of the drawer, then the drawee may get the cheque "accepted," or as it is usually called "certified" or "marked good" by the ledger-keeper of the bank. The bank then undertakes to pay the cheque, and it is charged at once against the drawer's account in the bank, and the following, or its equivalent, written across the face of the cheque, the same as an acceptance :

(Form 1.) "Certified."
Merchants Bank of Canada, Stratford,

J. E. McGee,
Ledger Keeper.

(Form 2) "Good."
Merchants Bank of Canada, Stratford.

J. E. McGee,
Ledger Keeper.

10. Payment of Raised "Cheques".—If a banker pays a cheque that has been raised from a smaller sum to a larger sum, he is responsible, and cannot charge the drawer of the cheque with the increased amount, unless it can be shown that the drawer's carelessness in drawing the cheque, facilitated the forgery. For instance: If you write a cheque for five dollars thus—

Five Dollars,

leaving a blank before the "five" or between "five" and "dollars," and some person writes in a hundred or thousand between them, the banker who paid such a cheque would not be held accountable, the careless maker would lose it, because he put a premium on the raising, and was accessory to the forgery by leaving said space that it could readily be done—he is an accessory to the crime. His punishment is the loss of the amount of the raising of the cheque. The same is true also regarding all negotiable paper. Do not leave any blank spaces either before, in the middle, or at the end of an amount in negotiable paper.

11. Revocation of Payment.—The duty of a bank to pay a cheque drawn on it by its customers are terminated by :—

(*a*) A countermand of Payment.
(*b*) Notice of the Customer's death.

Cheques are sometimes lost or stolen, or the drawer wishes to withdraw a cheque issued, he should give written notice to the bank, countermanding payment. Such notice should contain a full description of the cheque.

CHAPTER 21.

CROSSED CHEQUES.

- Definition.
- Use of Crossing.
- Crossed Generally.
- Crossed Specially.
- Forms of Crossing.
- Special Points.

1. Definition.—The drawing of two parallel lines across a cheque, with or without the addition of words, is called "Crossing a Cheque". Sections 72-81 of the Bills of Exchange Act of 1890 introduced this practice from Great Britain, and gave it legal status in Canada. Those who are familiar with foreign invoices have frequently seen on the invoice heading the notice of the sender, as to how Cheques should be crossed, and giving the name of the firm's banker, such as the following: "All cheques should be crossed Alliance Bank."

2. Use of Crossing a Cheque.—A Cheque that has been crossed cannot be paid in cash over the counter of the bank. It must be put through the deposit account:

(1) Of the payee, if marked non-negotiable; or
(2) Of the payee or endorser, if crossed without the words non-negotiable.

Crossing is used to place on record in the books of the Bank or Banker, (an independent record,) the name of the person actually getting the payment for the cheque for one or both of two purposes, viz :

(1) As evidence that the payee has been paid the amount of the cheque.

(2) To prevent unauthorized or fraudulent cashing of the cheque in case it is lost.

3. Crossed Generally— A cheque is said to be crossed *generally*, if the name of a bank is not mentioned in the form of crossing.

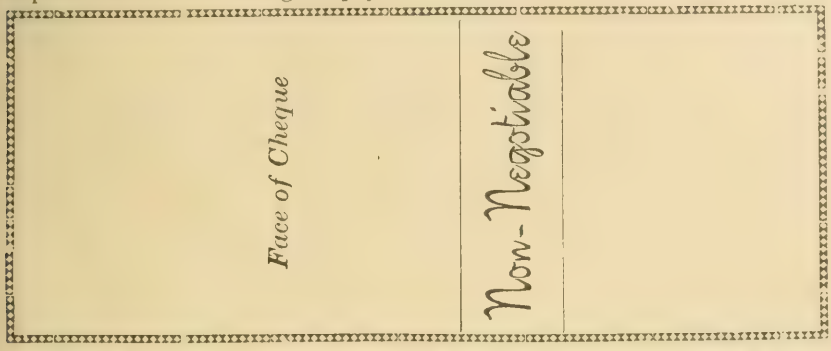
4. Crossed Specially.—A cheque is said to be crossed *specially* when the name of a bank is mentioned in the form of crossing.

FORMS OF CROSSING.

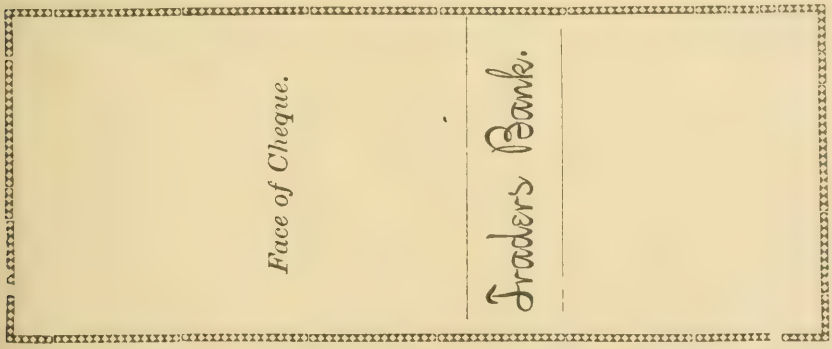
Form 1—Cheque crossed *generally*.

Form 2—Cheque crossed *generally* to a Bank when the Bank of the payee is not known to the drawer.

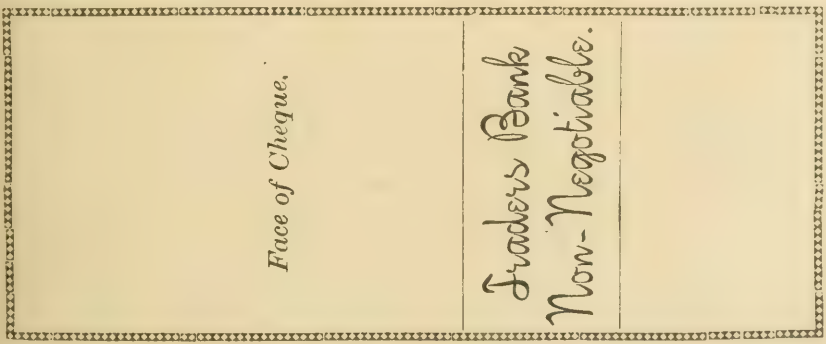
Form 3—Cheque crossed *generally* but collectible only through the deposit account of the original payee.



Form 4—Cheque crossed *specially* when the Bank of the payee is known to the drawer.



Form 5—Cheque crossed *specially* when the Bank of the payee is known, and the drawer wishes it passed through his account and not to be otherwise negotiated by him.



Special Points:

(1) A Cheque may be crossed by the drawer, either generally or specially.

(2) A Cheque that is uncrossed, may be crossed, either generally or specially, by the holder.

(3) A crossed cheque may be re-opened or uncrossed, by the drawer by writing between the transverse lines the words "pay cash," and his initials.

(4) A bank may cross specially to another bank for collection the following:—

(*a*) A cheque crossed specially to itself;
(*b*) A cheque crossed generally;
(*c*) An uncrossed cheque.

(5) The crossing on a cheque is a material part of the cheque, and it is unlawful to obliterate or change it, except by the maker.

CHAPTER 22.

MISCELLANEOUS HINTS AND FORMS

- Collection of Accounts.
- Acceptance by Mail.
- Honor and Dishonor.
- Accommodation Drafts.
- "Kite Flying."
- Swindling Notes.
- Place of Payment.
- Days of Grace.
- Necessary Conditions.
- Value Received.
- Liability of Respective Parties
- Bank Drafts.
- Post Office Orders.
- Bank Notes.
- Deposit Receipts.
- Coupon Bond.
- Registered Bond.
- Letter of Credit.
- Warehouse Receipt.
- Bills of Lading.

I. Collection of Accounts.—Almost all business houses now draw drafts on their customers for the collection of accounts and debts due them The drawer may make a draft on the drawee—

(1) In favor of a third party, or
(2) In favor of himself.

The wholesale merchant or manufacturer may either draw in favor of his banker or in favor of a creditor, or draw it in his own favor, being drawer and payee on the one draft.

2. **Acceptance by Mail.**—A draft should not be sent by mail to the drawee for acceptance. It is not like a promissory note unsigned. It is an order, and should the drawee choose to keep the draft, *he would have the equivalent of a receipt for the payment — hence drafts are drawn and handed to a bank or banker to procure acceptance.* If a person lives at a distance from a bank, a form may be sent him containing a copy of, or particulars of, the draft. He accepts by empowering an official of the bank to act as his attorney, for the purpose of accepting the draft described.

FORM.

THE MERCHANTS BANK OF CANADA.

BROCKVILLE, DEC. 24, 1897.

TO JOHN JONES, Chatsworth.

The Bank has received for acceptance and collection the undermentioned Draft, drawn on you. If it is your desire to accept the draft, kindly sign the Power of Attorney hereon; if not, please state your reason for declining.

No. 4568 drawn by Wm. Richmond of Brockville, for $800, dated Dec. 24, 1897, payable 60 days after date.

Due Feb. 25, 1898. W. J. PATERSON,
Manager.

(The following to be written across or underneath the above by John Jones, if he wishes to accept.)

CHATSWORTH, DEC. 27, 1897.

I hereby appoint Joel Forbes my Attorney, to accept the above described Bill, (with full power to appoint a substitute for that purpose,) payable at the Merchants Bank of Canada.

Witness, JOHN JONES.
Peter Lathrop.

3. **Honor and Dishonor.**—A draft is said to be honored when it is accepted, and dishonored if acceptance is refused.

An accepted time draft is often known as an "Acceptance."

4. **Accommodation Drafts.**—Where one person lends his name to another for the purpose of becoming his surety, he "accommodates" the second party.

When an accommodation draft is drawn, the acceptor lends his name to the drawer. Suppose Smith draws a draft on Brown in favor of Johnston, and Brown accepts, when he really does not owe Smith anything—this is an accommodation draft. If Brown does not pay, Smith could not enforce payment, as he has given no value. Johnston could enforce payment as an innocent holder of value.

5. **"Kite Flying."**—The drawing and discounting of accommodation drafts is called "Kite Flying," and it often brings scores of houses down, unexpectedly. A wholesale house, we will suppose, is hard up. They represent to a customer that they have to make large advances on European import

orders, and ask the liberty of drawing on the retail customer, on the strength of ordered goods, that they are importing. The customer has had extensions of time, perhaps, from the house, and cannot very well refuse them. The draft is taken up by the wholesale house at maturity. After a while another larger sum is drawn for, accepted and paid, and so on till the retail customer is ostensible security, but really as principal debtor on many bills. This goes on, not with one customer, but with many. In due time the bank finds out that what purports to be customers' *bona fide* paper, is only accommodation paper, and stops making discounts, and down goes the wholesale house, carrying in its train many of its "accommodating" but unsuspecting customers. Never fly another man's kite.

6. Swindling Notes. Many forms of agreements have been arranged by sharpers to deceive the unwary. They are generally worked against the farmer by persons claiming to be travelling salesmen for manufacturers or dealers. The perambulating scoundrels are always abroad. A shot gun and a bull dog are supposed to be an excellent protection against them, but a little good business education and care are better protection.

Cautions :

(*a*) Do not sign any document without first reading it over carefully and observing that it cannot be cut apart so as to leave your signature to a note form.

(*b*) Do not sign any document without having a copy left with you, signed by the agent, and giving the name of his firm.

(*c*) See that the document and your copy are alike and fully contain all parts of the bargain made. Do not trust to what the agent says, have all put in writing.

(*d*) Deal only with reputable firms, and as far as possible only with agents that you are well acquainted with. Do not trust a stranger.

(*e*) Always get the article purchased, and be sure it is satisfactory before signing a note for it.

Form used where top is cut off leaving the signature attached to a note.

I hereby order from W. H. Massey, Twenty-five Patent Double-Acting Hay Rakes, for which, when sold

I promise to pay on demand to W. H. Massey, or bearer, the sum of Five Hundred Dollars, at the Bank of Hamilton, Orangeville.

ROBERT MURPHY.

Mulmur, Mar 3, 1902

Mulmur, March, 3, 1902.

Six months after date I promise to pay to W. H. Massey, or bearer, fifty dollars when I sell by order Four Hundred and Fifty Dollars' worth of Foster's pat. anchor fence for value received, with legal Interest without appeal, and also without defalcation or stay of execution.

ROBERT MURPHY, *agent for Foster's patent anchor fence for Dufferin Co.*

Witness
John Brown.

(Form used where the end is cut off leaving the signature on a Note.)

This form is often worked where a patent right is involved, and where the pay for the right is only supposed to be payable after sales have been made. At first sight it appears very favorable to the newly appointed agent, but when the end is cut off it is a very hard form of note. Either of these notes in the hands of a holder in due course would be collectible.

7. Place of Payment.—It is not legally necessary that a place of payment be mentioned in a note or bill. It is, however, a great convenience that a place be mentioned—a bank, an office, a residence, etc.; then the holder knows where to go with the money and receive his note in return.

8. Necessary Conditions.—It will be noticed from the foregoing chapters on negotiable paper, that it is not necessary to have a particular form of words, but that it must comply with the following conditions:

(1) It must be in writing.
(2) There must be a promise or an order.
(3) The promise or acceptance must be unconditional.
(4) It must be signed by a competent person.
(5) It must be payable to a certain person, or his order, or bearer.
(6) It must be payable in money.
(7) It must be negotiable in form, or by endorsement.
(8) It must be payable at a fixed or determinable time.
(9) It must be for a fixed or determinable amount.

9. Days of Grace.—Negotiable paper in which the date of payment is mentioned in the form, has three days of grace. Example—A note drawn as follows, "On or before the twelfth day of August next, I promise to pay &c.," would mature on August fifteenth—three days after the day mentioned in the form.

10. Value Received.—These words are usually inserted in negotiable paper, though not legally necessary. The negotiable paper is not generally given at the beginning of an executory contract, but at the completion; hence it is presumed that value has been given before the paper is given.

11. Liability of Respective Parties.—The following plan shows, in convenient form, the order in which the responsibility for payment falls on the parties to notes, drafts and cheques.

In a Note	In an unaccepted draft or uncertified cheque	In an accepted draft.	In a certified cheque.
(1) Maker.	(1) Drawer.....	(1) Acceptor	(1) The Bank.....
(2) 1st Endorser.	(2) 1st Endorser	(2) Drawer.....	(2) 1st Endorser.
(3) 2nd Endorser.	(3) 2nd Endorser.	(3) 1st Endorser.	(3) 2nd Endorser.
(4) 3rd Endorser.	(4) 3rd Endorser.	(4) 2nd Endorser.	(4) 3rd Endorser.
&c.	&c.	&c.	&c.

12. Bank Drafts are drafts in the ordinary form drawn by one bank or banker on another bank or banker, payable immediately, without days of grace, to third parties. If you desire to remit money to Winnipeg, you may send the bills or gold by express or registered letter, or you may buy a draft —pay your money to your banker and something extra for his trouble, ($\frac{1}{8}$, $\frac{1}{4}$, or $\frac{3}{8}$ of one per-cent.,) and he will give you a draft on a Winnipeg banker, in favor of your creditor. You remit the draft, without the risk attending the transmission of current funds. The bankers usually settle with one another every three months. The percentage paid to the banker for his trouble is called exchange or commission.

13. Post Office Orders.—A post office order is really a Government draft, drawn by one post office on another, and payable to a third party. The amount paid the Government through the postmaster for his trouble is called commission.

14. Bank Notes are promises to pay, issued by Governments and Banks. They are used instead of gold and silver, being lighter to carry. They are not subject to the statute of limitations. They are never outlawed as to time.

15. Deposit Receipts.—A "deposit receipt" or "certificate of deposit" is a receipt given by a bank for money deposited in the bank. It is usually payable to the order of the depositor, and bears interest. It is, when drawn to a person or his order, negotiable by endorsement. It is equivalent to a certified cheque. If part of the money or interest is wanted, the money must be drawn and the balance re-deposited; or in other words, the receipt surrendered, and another issued for part and cash issued for the remainder.

FORM OF DEPOSIT RECEIPT.

DEPOSIT RECEIPT

$200. No. 693.

THE HOMESTEAD BANKING AND SAVINGS SOCIETY.

Incorporated 1889. Authorized Capital, $1,000,000 in 5,000 Shares of $200 each.

KINGSTON, Jan. 15, 1897.

RECEIVED from S. J. Parker, Esq., the sum of Two Hundred $\frac{00}{100}$ Dollars, which sum will be accounted for by the Society to the said, S. J. Parker, or his order, upon the surrender of this Certificate only, and will bear interest from the 15th day of Jan., 1897, until within fifteen days of time of withdrawal, at the rate of five per cent. per annum. No interest will be paid on this deposit unless it remains three months.

GEORGE MEIR,
Mgr. Homestead Banking and Savings Society.

16. A Coupon Bond—sometimes simply a "bond," sometimes a "debenture"—is the written promise to pay, made and issued by a corporation or company, with small promises to pay for each half-yearly payment of interest attached. They are used—

(1) By corporations, to borrow money and create a debt for some public work or improvement. The money to repay the principal of the debt is collected in equal yearly sums, as taxes, and invested so that the bond may be retired at maturity. These annual investments to meet principal are called a "sinking fund."

(2) By companies, such as banks and loan companies, when they borrow at home or abroad, at a low rate of interest, for a long term, and loan out at a higher rate of interest. The interest in each case is paid usually half yearly, on presentation of the proper coupon.

17. Registered Bonds.—Bonds are sometimes issued without coupons attached. They are known as Registered Bonds, because they are made payable to a certain person, and the payee's name is recorded in the office of the corporation or company that issues the bonds. The interest is paid in cash or by cheque, to the person whose name is recorded as the owner, or to his agent or legal representative. A registered bond is the same in form as a coupon bond without the coupons.

Bonds, when considered from an investor's stand-point, are known as First Mortgage Bonds, Second Mortgage Bonds, Third Mortgage Bonds, etc., according to their priority of lien on the assets of the corporation or company. The bonds of a company may be a safe investment when the stock is not. You might be safe in lending a firm money on their paper, when you wopln

not care to incur the liability of being a partner. The stock of a prosperous company frequently sells higher than its bonds, because of its higher rate of dividend and large reserve fund, when the bonds only pay a nominal rate of Interest.

£50.

THE ONTARIO LOAN AND DEBENTURE COMPANY.

LONDON, ONTARIO.

ISSUED UNDER AUTHORITY OF THE ACT OF THE PROVINCE OF ONTARIO.

DEBENTURE NO. 2265. TRANSFERABLE

The President and Directors of the Ontario Loan and Debenture Company, acting for and on behalf of the said Corporation, promise to pay to Timothy Jones or bearer, the sum of Fifty Pounds Sterling, on the first day of March, in the year of our Lord 1908, at the Counting house of Messrs. Borthwick, Wark & Co., Bartholomew House, Bartholomew Lane, London, E. C., with interest at the rate of five and one-half per centum, to be paid half yearly, on presentation of the proper coupons for the same as hereunto annexed, on the first day of April, and the first day of October, in each year, at the said office.

{SEAL} Dated at London, Ont., first day of March, 1898.

For the President and Directors of the Ontario Loan and Debenture Co.

THOS. SYMES, Manager. J. W. SMITH, President.

COUPON.

(20 of these would be attached to the foregoing debenture, one for each half year's interest.)

THE ONTARIO LOAN AND DEBENTURE COMPANY. LONDON, ONT.

£1. 7s. 6d., Stg.

Half yearly interest due October 1, 1898, for £50 Stg. at five and one-half per cent. per annum, payable at the Counting House of Messrs. Borthwick, Wark & Co., Bartholomew House, London, E. C.

For the President and Directors.

DEBENTURE NO. 2365.
COUPON NO. 20.

THOMAS SYMES, Manager.

18. A Letter of Credit is really a draft from which sums may be drawn by the holder from time to time as he requires them, the whole sum not exceeding the amount mentioned in the letter. They are used by parties travelling in foreign countries, usually, to save carrying much cash on person.

FORM OF GENERAL OR CIRCULAR LETTER OF CREDIT.

LETTER OF CREDIT.

No. 2364. WOODSTOCK, ONT., DEC. 2, 1897.

To the Correspondents of the Merchants Bank of Canada.

£800.

GENTLEMEN,—We have the pleasure of introducing to you Mr. A. L. McIntyre of this place, who purposes visiting England, Scotland and Ireland, and desires to open a credit with you. You will please furnish him with such funds as he may require, in the aggregate not more than Eight Hundred Pounds Sterling, on his sight draft, drawn on Glen, Mills & Co., Bankers, London, each draft to be plainly marked as drawn on the Merchants Bank, Letter of Credit No. 2364.

We guarantee such drafts shall meet with due honor in London within six months from this date; and you are requestsd to buy them at current rates of exchange, deducting your commission, if any. The amount of each draft must be endorsed on the back of this letter, and the letter itself taken up and attached to the last draft. Kindly have all drafts signed in your presence, and carefully compare with signature below.

P. W. D. BRODERICK, Manager.
J. EGAN MAGEE, Accountant.

Signature of payee.
A. L. McIntyre.

FORM OF ENDORSEMENTS OF DRAFTS ON LETTER OF CREDIT.

Bankers paying drafts on the within Letter of Credit will carefully endorse hereon such payments in the order made.

Date of Payment.	By whom paid.	Place paid	Amount in words.	Amount in figures
Jan. 15, 98.	Stuckey, Woods & Co.	Dublin...	One Hundred P'ds	£100....
Feb. 6, "	Glen, Mills & Co.....	Edinboro'	Three Hun'd P'ds	£300....
Mar. 24, "	London & Provincial Bank'g Co	Manchest'r	One Hund'd P'ds	£100....
Apr. 4, "	Alliance Bank.....	Leeds....	Eighty Pounds..	£80. ....

Letter No. 2364 of Merchants Bank of Canada, Woodstock, Ont.

19. Warehouse Receipts are Receipts given by the owners of warehouses, storehouses, elevators, yards, etc., acknowledging the possession of chattel property stored, or kept for the owners of such chattel property. The ownership of the property may be changed on purchase, by the endorsement and delivery of the warehouse receipt. These receipts are used largely as

collateral security. They are given to bankers, by grain buyers and others, along with their notes, as security for further advances of money.

17. **A Bill of Lading** is the receipt of a boat, or master of a boat, or the agent of a railway station, acknowledging that goods mentioned therein are in possession for transit from one place to another. The bill of lading may be endorsed the same as a warehouse receipt. It is sometimes called a shipping receipt.

CHAPTER 23.

DISCHARGE, DISHONOR, ETC.

1. **Discharge** (*a*) A bill or note is discharged by payment of it by the maker or acceptor, or any person in their behalf, at or before maturity.

(*b*) Where a bill is payable to the order of the third party, and the drawer pays it instead of the drawee, the drawer may enforce payment of the bill, but not re-issue it.

(*c*) Where a bill is paid by an endorser, he may enforce payment of it against former endorsers, but not against those who endorse after him.

(*d*) If an accommodation bill is paid by the party accommodated, it is discharged, as he is the party who got the value for it in the first place.

(*e*) When the acceptor of the bill, or the maker, becomes the owner of his bill, payable for value, it is discharged. For example: A might owe a bill for $100; he may exchange a horse for it, and thus become the holder of value.

(*f*) If the holder of a bill or note absolutely and unconditionally renounces his rights against the acceptor or maker in writing, the bill is discharged.

2. **Release of Endorsers.** An endorser on a bill or note may be released from his obligation in several ways:

(*a*) If a bill or note has been paid by the maker.

(*b*) If a bill or note has been paid by a prior endorser. *Example.* Suppose M is the first endorser, N the second endorser, O the third endorser, if M pays the bill N and O are released, if N paid the bill O is released.

(*c*) Extension of time by the payee without consent of the endorsers will release them because their contract terminates at the making of the bill or note.

(*d*) If a bill or note has been dishonored and no notice of it is sent to the endorser, he is released.

(*e*) If the principal to a bill or note is released the endorsers are released unless they are expressly held by the holder of the bill or note.

(*f*) The holder of a bill or note may release any endorser by cancelling his endorsement.

Endorsers are deemed to have endorsed in the order in which they appear on the bill or note and will be held liable in that order unless it is expressly proved that they signed in a different order.

3. **Cancellation of a Bill or Note.**—If a holder or his agent intentionally cancels a bill or note, it is discharged. If a holder or his agent unintentionally cancels a bill or note, it is not discharged. He should write on "cancelled in error," and sign his name or initials.

4. **Altered Bills and Notes.**—If a bill or note is materially altered, it is voided, except as against—

(1) The person assenting to such changes;
(2) Subsequent endorsers.

Bills and notes that have been altered are good in the hands of "an innocent holder of value," unless the alteration is apparent. The following are the material alterations:—

[1] Of the date;
[2] Of the sum payable;
[3] Of the time of payment;
[4] Of the place of payment;
[5] Of the addition of the place of payment without consent, when no such place was mentioned in the acceptance.

5. **Dishonor.**—Bills are dishonored by:—

[1] Non-acceptance;
[2] Non-payment.

Promissory notes are dishonored by non-payment.

Before a bill can be said to be dishonored, it must have been presented for acceptance or payment; presentment must be made by the holder, or on his behalf, within reasonable hours. If a bill is not presented for payment, the drawer and the endorsers are released.

6. **Presentment for Acceptance.**—A bill must be presented:—

[1] To the person on whom the draft is drawn; or,

[2] To his representative, if he is dead;

[3] If there are two more drawees not partners—present to each.

7. **Presentment for Payment.**—Bills or notes must be presented for payment:—

[1] At the place specified in them for payment;

[2] If no place of payment is mentioned, but the address of the drawer or acceptor is given—present at the address given;

[3] If neither place of payment, nor acceptor's nor maker's address is given—present for payment at business office, or residence of maker or acceptor.

[4] If there are two or more drawers or acceptors, and no place of payment mentioned—present to each at his office or residence.

[5] If a bill or note is payable at a village, or town, or city, and no particular place mentioned, it may be presented at the post office, if authorized by custom or usage, and if the maker's or acceptor's place of business cannot be found.

8. **Presentment Delayed or Dispensed With.**—When circumstances beyond the control of the holder prevent presentation, it is excused; but it must be presented as soon as the hindrance ceases. Presentment is dispensed with;

[1] When, after the exercise of due diligence, it cannot be done;

[2] When presentment has been waived by the parties liable on the instrument. Failure of presentment does not in any way relieve the maker of a note, or the acceptor of a draft, of liability to pay it.

9. **The Endorser's Contract.**—An endorser of a note or draft and the drawer of the accepted draft, only become responsible for the time the bill has to run. For example: A endorses a note drawn payable in three months. His contract does not call for him to guarantee the debt for three years—only for the time tt has to run—that is three months, and three days of grace. If a note or draft is not paid when due, the holder has an *immediate right* against the drawer and endorsers—not a right a year or three years afterwards. The drawer or endorser's contract ceases, unless he receives notice that the bill

has been dishonored, and such notice must be given by, or on behalf of the holder. Notice of dishonor may be given verbally or in writing, and must be given on the day of dishonor, or the next business day thereafter.

Such notice may be effectually given :—

[1] By delivering to them personally ;

[2] By placing them in the post office, post-paid, addressed to the drawers, makers and endorsers at their last known address : if such addresses are not known, addressed to them at the post office where the bill is dated.

10. Damages on Dishonored Instruments are called "liquidated damages," as they are fixed or determinable from the instrument, and are as follows :

[1] The amount of the bill ;

[2] Interest thereon from time of presentment to time of payment ;

[3] Expense of protest.

11. Form of Protest for Promissory Note.—

$60.00 MILTON, ONT., Nov. 3, 1897.

Two months after date, for value received, I promise to pay to the order of John Smith, Sixty Dollars, at the Merchants Bank, Milton.

W. J. PATERSON.

COPY OF ENDORSEMENT ON NOTE.

Pay to the order of Jas. McLaren.

JOHN SMITH.

PROTEST.

On this 6th day of January, in the year 1902, I, John Logie, in the Province of Ontario, at the request of James McLaren, did exhibit the original promissory note, whereof a true copy is above written, unto the teller of the Merchants Bank, Milton, and speaking to himself, did demand payment thereof ; unto which demand he answered, "No Funds."

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers, (or drawer and endorsers,) of the said bill, and other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interests, present and to come, for want of payment of the said promissory note.

SEAL

All of which I attest by my signature.

JOHN LOGIE,
Notary Public.

12. Notice of Protest :—

MILTON, ONT., Jan., 1902.

MR. JOHN SMITH, Milton, Ont.

Sir,—Mr. W. J. Paterson's promissory note for $60, dated at Milton, Nov. 3, 1992, payable two months after date, to John Smith or order, and endorsed by you, was this day at the request of Jas. McLaren, duly protested by me for non-payment.

JOHN LOGIE,
Notary Public.

13. Endorser Held Without Protest.—The bankers always protest dishonored paper that is their property, unless instructed by the endorser to charge it back to him. They do so to have official proof of notice being given the endorser. It is not necessary, however, to formally protest by a Notary. If the holder of the dishonored paper gives notice of dishonor to the endorser, either personally, or in such other manner that he can prove, if necessary, that notice has been given, it will serve the same purpose as protesting, viz:—to hold the endorser responsible after maturity of paper.

14. Cost of Protest.—The expense of a Protest varies in different Provinces.

Province.	Protest	Notices
Ontario, Nova Scotia, P. E. Island...	$ .50	.25 each
Manitoba, Quebec.....	1.00	.50 "
North-west Territories.....	2 00	.50 "
New Brunswick.....	1.00	including notices.
British Columbia.....	2.50	" "

CHAPTER 24.

VARIOUS SPECIAL FORMS.

- DUE BILL AND I. O. U.
- FORMS OF ABOVE PAYABLE IN CASH AND GOODS.
- ORDERS.
- FORMS OF ORDERS PAYABLE IN CASH AND GOODS.
- CHATTEL NOTES.
- FORMS OF SAME.

1. Due Bill and I. O. U.—A due bill is a written acknowledgement of a debt. It is not a promise to pay, hence not payable at a certain time. A

debt that is evidenced in this way is not liable to dispute. It is an *acknowledged debt.* It should comply with the following points:—

[1] It must be dated.
[2] There must be words acknowledging the indebtedness.
[3] The amount payable, or the articles payable, should be specified.
[4] It must be signed by the person making it.

2. Form [1] Payable in cash.

> BRAMPTON, Jan. 15, 1902.
>
> Due W. J. Paterson Fifty Dollars, for value received.
>
> J. W. SMITH.

Form (2) Payable in cash.

> ORILLIA, Jan. 30, 1902.
>
> Good to Thos. Masson & Co. for Forty-two Dollars.
>
> ARTHUR B. COLE.

Form (3) Of what is commonly called an I. O. U., payable in cash.

> WESTON, Feb. 13, 1902.
>
> *I. O. U. Six Dollars.*
>
> MILTON J. DAVIS.

Form (4) payable in goods.

> BERLIN, March 26, 1902.
>
> Due J. S. Williams, Fourteen Dollars in goods from our store.
>
> W. K. IRELAND & Co.

Form (5) payable in specific articles.

BARRIE, April 30, 1902.

Due W. H. Cooper, Sixty bushels of No. 1 spring wheat.

FRED. A. BALE.

3. Orders.—An order is a written request, made by one person, asking a second person to deliver to a third person certain goods or money, and charge the same to the person signing the order. It is the same in form as a draft, but usually payable in goods or chattels.

4. Form (No. 1)—

DETROIT, MICH., May 17, 1902.

E. J. Morrison & Co.

Gentlemen,—Please deliver to Jas. J. Reith, or order, Fifteen Dollars worth of goods, such as he may select, and charge the same to the account of

C. CULBERTSON.

Form (2) payable in cash.

99 YORK STREET, HAMILTON, Jan. 14, 1897.

J. S. BRETT, Esq.,

Dear Sir,—Please pay the bearer, Mr. S. Howes, Sixteen Dollars, from the funds left with you this morning.

JOHN GIBSON.

5. Chattel Notes.—A promissory note is payable in money. A chattel note is not payable in money. A chattel note is,—

(1) Payable in some specified goods or personal property.
(2) It is not negotiable paper.
(3) It must be used in the name of the payee.
(4) No days of grace are allowed.

It is the duty of the maker of such a note to deliver the specified articles mentioned in the note, at the time and in the manner directed in the note, or at the place directed by the payee. If he neglects to pay the goods at the time and in the manner as agreed upon, the payee may demand payment in

money. He may tender the articles, if they are portable. If cumbersome, he may offer to deliver. If the payee refuses or neglects to receive them, the debt is discharged by the tender of the articles. If they are refused and left in the hands of the maker of the note, he may hold them as a bailee for the other party, giving them ordinary care at the expense and risk of the payee. If afterwards the payee requests delivery of the goods, they must be given up to him, if he pays the expenses incurred on them in the meantime.

FORM 1.

$40. MANILLA, July 20, 1897.

On or before the first day of December next, I promise to pay Samuel J. Ferrell, at his store, one hundred bushels of good White Elephant Potatoes, at forty cents per bushel. W. J. HAMMILL.

FORM 2.

PRESTON, March 15, 1897.

Six months after date I promise to deliver to Thomas Gibson, at his storehouse, 45 packages of first-class Lake Trout, and 55 packages of No. 1 White Fish. J. J. BALL.

CHAPTER 25.

ACCOUNT, INVOICES, &c.

1. **A Book Account** is a collection of business transactions with one person, consisting of either debits or credits, or both debits and credits. These

transactions may be sales of goods, payments, services rendered, etc., or all or any of them. They are usually gathered together in one place, in a book called the *Ledger*.

2. A Book of Original Entry is the one in which the entries are first made, and is one which is really evidence at law. There may be a number of books of original entry in a business. The stubs of cheque and receipt books, counter-foils of bills and invoices, letter-press copies of invoices, day books, etc., are all books of original entry.

3. Entries of Transactions.—It is important that the first entry of t h transaction be clear, definite and complete. It should state :—

(1) The date on or about which the transaction was made.
(2) The person with whom the business was done, and his residence, and any special circumstances as to whether it was done with him personally or with his agent.
(3) The particulars of the transactions, such as stating whether it be a purchase, or sale, or payment, and the items of charge or credit and the value of same.
(4) The terms of payment.
(5) Any items of special interest, such as the person to whom the delivery was made, etc.

4. Entries-How Made.—It is necessary that the entry of the transaction be made—

(1) As near the time of its occurrence as possible, so that there may be no slip of memory.
(2) In the case of sales of goods, entries should be made when goods are ready for delivery.
(3) The particulars should be of a specific nature, no general, as a general charge would be lacking in evidence to support it.
(4) Entries should not be mere memoranda, but should be made for the purpose of *charging* the debtor.
(5) Entries should be made by the person who made the bargain, whether he be a principal or an agent.

5. Mistakes and Corrections.—The entries in a book of original entry should never be scraped or rubbed out, nor should anything be interlined between them. A person may scrape or rub as he pleases in the books he carries the transactions to, without invalidating or injuring the books as evidence; but he must leave the original entries as they were made. If a mis-

take has been made, simply rule out the transaction with red ink, leaving it that it can still be read, or write "Void," or some such word, before it or across it. To correct the mistake, write out the transaction afresh, correctly, in the book, and make reference to the correct entry on the incorrect one.

6. Invoices.—Sales of goods are usually accompanied by a detailed statement of the goods, called an invoice. Such statement should be very explicit, giving—

(1) Date of purchase and name of purchaser
(2) The terms upon which the property was sold.
(3) A full list of the goods, giving numbers, marks, brands, quantity, such as weight, measurement, or number, the price of each, and the total price.
(4) The number of cases in which it is packed, the marks or address and the particulars of transportation, The invoice heading should contain such words as "*Bought of*," or "*Sold to.*"

The following is an ordinary form of invoice:

FORM OF INVOICE.

MONTREAL, Mar. 1, 1902.

MESSRS. J. R. BOYD & Co.,
Bowmanville, Ont.,
Bought of WILSON BROS. & CO.
Wholesale Dealers in Groceries, &c.

Terms: 30 days, or 2% off for Cash.

A O 25	3 1	Chests Y. H. Tea, ... 210 lbs.	50c.	105 00
D. S. = ×	2 3	Bag. [25] Rio Coffee, ... 100 lbs.	24c.	24 25
		Boxes P. G. Starch, ... 150 lbs.	04c.	60 00
		Bbls. W. G. Sugar, 120 – 20 = 360		
		117 – 19 59		
		123 – 20 301 lbs.	8½c.	25 59
		Shipped per C.P.R., in		214 84
		5 boxes, 1 bag and 3 bbls....		

7. A Bill is a list of goods purchased, or services rendered, giving the particulars, etc. It is usually made out at the time of the transaction, and contains only debits or credits, not usually both. The particulars are not generally given as fully as in an Invoice. The heading should be in the form "John Smith To J. W. Jones Dr."

FORM OF BILL.

THORNBURY, JAN. 19, 1902.

MR. F. C. McDOWALL,

To J. H. NOTTER, Dr.

Dealer in Groceries, Crockery, Glassware, &c.

3	lbs. Cheese, ... @	16c.	$0.48
4	" Bacon, ...	12½c.	.50
2	" Raisins,....	10c.	.20
2	Cans Salmon, ...	18c.	.36
1	Broom, ...		.30
2	Lamp Chimneys, ...	08c.	.16
			$2.00

Received payment,
J. H. NOTTER.

Form of Invoice of a shipment of goods sent to a commission merchant for sale on account and risk of shipper.

FORM OF INVOICE OF SHIPMENT.

WALKERTON, Jan, 5th, 1897

Invoice of Shipment of Wheat, sent to JOHN WILSON, Toronto, Ont., to be sold on account and risk of WM. STEARNS, Consignor.

Bush.	400	Red Wheat No. 1 Hard, ...	@ 1 05	$420 00
"	500	White " "	@ 1 10	550 00
		Paid freight on same, 900 bu.	@ 05	45 00
				$1015 00

8. An Account is a detailed statement of all the transactions with a person, either debits or credits, or both, during a certain time. It will include all kinds of transactions—sales, purchases, returns, payments, allowances, labor, services, etc., etc. The heading should have such words in it as "In account with," and a balance due one person or the other is usually written on it.

FORM OF ACCOUNT.

DURHAM, Feb. 21, 1902.

MR. W. B. HILL,
Town,
In Account with CHRISTIE & AGAR.

Jan.	2	To 1 Coal Stove, 20 00 Pipes, 5 00	$25 00	
		" 1 Platform, ...	1 00	
		" Putting up Stove, ...	75	
Mar.	3	" Repairs to Water Pipes, 4 hours of man,	1 00	
"	3	" 13 feet half-inch pipe, @ 5c.....	65	
Sept.	19	" 1 Bath and fittings, per contract,....	14 50	
"	19	" 2 hours of man and helper, repairing furnace	1 20	$44 10
		———Cr.———		
July	2	By Cash	$ 8 00	
Aug.	3	" Note at three months, from Mar. 1,..	20 00	28 00
		Balance due,		$16 00

9. Credit Note.—A credit note, sometimes called "Credit Memo." or "Credit Invoice," is a statement crediting a person with goods returned, or reductions or abatements in prices of goods already invoiced and charged to him. It is the converse of an ordinary invoice. It is the custom to have the Credit Note forms printed or written in red ink, that they may be readily distinguished from an ordinary invoice in checking off a monthly statement.

FORM OF CREDIT NOTE.

HAMILTON, Jan. 12, 1902.

CHARLES F. FERGUSON,
CREDITED BY W. M. WILSON & CO.

	By 1 chest of Y. H. Tea, returned, 80 lbs. @ 25c.	$20	00

10. A Monthly Statement is a synopsis of an account, a brief enumeration of the different purchases during the month, together with any payments

or credits on the purchases. It is sent out monthly to persons who purchase on credit, so that any necessary correction may be made before settlement. The *average* due date of the purchases in the statement is usually found by equation, and a draft drawn for the balance, dated at the equated due date.

FORM OF STATEMENT.

HAMILTON, Jan. 31, 1902.

MR. CHAS. FERGUSON,
Hanover, Ont.

In account with W. M. WILSON & Co.

Jan.	3	To Invoice 30 days, ...	$140 00	
"	10	" " 60 days,..	228 69	
"	20	" " 10 days, ...	185 80	$554 49
		———*Cr.*———		
Jan.	8	By Cash.....	$100 00	
"	12	" Credit Note (returns)	20 00	
"	15	" Note 90 days	200 00	320 00
		Balance due, our favor		$234 49
		Due by equation Feb. 19, 1897.		
		We have drawn on you for balance at 30 days from January 19. Kindly honor on presentation, and oblige,		
		W. M. WILSON & Co.		

11. The Terms.—When sales of goods are made on credit, the terms are usually named and mentioned in the invoice or bill of goods sent at the time of shipment. It frequently happens that accounts are allowed to run, consisting of numerous small charges for goods, services, etc. In the absence of other agreement, these are usually considered due when an account of them is rendered. Many tradesmen and merchants have special statements of terms printed on their account forms, such as "*Accounts due when rendered:* or "*Interest charged at the rate of one per cent. per month after the date of this account.*" Such terms, when printed or written on the account, are binding on the debtor, unless he objects to them. In that case special terms would be agreed upon.

12. An Account of Purchase is a statement of goods purchased by one person for another, giving a full list of the artices purchased, who purchased from, the terms of purchase, the manner of shipment, and the total cost, including commission, expenses, etc.

FORM OF ACCOUNT OF PURCHASE.

COLLINGWOOD, Jan. 7, 1902.

Account of purchase of Wheat made by JOHN WILSON, Commission Merchant, Collingwood, for account and risk of A. F. GLENN, Toronto, Ont.

bush.	600	White Wheat ..... @	1.15	690 00	
"	300	Red "	1.00	300 00	$ 990 00
		———*Charges*———			
		Cartage		1 25	
		Commission 2%		19 80	21 05
		Charged to your account.			$1011 05
		E. & O. E.			

13. An Account of Sales is a statement made by a commission merchant of goods sold by him, on account and risk of another. It should give a list of the sales, to whom sold, the price and terms of sale; also all charges paid on the goods; also charges for commission, storage, advertising, etc., and the net proceeds shown as the difference between the sales and expenses; also how net proceeds are sent or credited.

FORM OF ACCOUNT SALES.

HAMILTON, JAN. 25, 1902.

Account of Sales of 900 bushels of Wheat, received Jan. 9, 1902, to be sold by JOHN WILSON, Commission Merchant, Hamilton, on account and risk of WILLIAM STEARNS, Walkerton, Consignor.

Jan.	8	Sold 200 bu. W. Wheat ..... @	1 25	250 00	
"	15	" 400 " R. Wheat	1 25	500 00	
"	24	" 300 " W. Wheat	1 30	390 00	$1140 00
		———*Charges*———			
Jan.	7	Paid Cartage, 900 bu.	½	$4 50	
		Storage, 900 bus.	1½	13 50	
		Commission, 1½% of sales		28 00	46 00
		Net proceeds placed to your credit..			$1094 00
		E. & O. E.			
		JOHN WILSON.			

14. Enforcing Collection of a Debt on the evidence of a book account is usually accomplished by sueing in a Court of competent jurisdiction, and placing in Court a statement, duly sworn to, before a Magistrate or Commissioner, on the following points :

(1) That the foregoing copy of account is taken correctly from the book of original entry.
(2) That the charges were made at or about the time of their respective dates.
(3) That the goods were sold and delivered, or the services rendered, at or about the time the charges were made.
(4) That the charges are correct, and the account just.

CHAPTER 26.

RECEIPTS AND RELEASES.

1. A Receipt is an acknowledgement in writing, that the person by whom it was signed has received from a party named in the receipt, something of value, such as money, negotiable paper, goods, services, etc. As a rule, a Receipt is strong evidence, that such money, goods. services, etc., have been given. It is not conclusive evidence, however, as the Receipt might have been obtained by fraud, or misrepresentation, or mistake. The Receipt may be contradicted by other evidence, and thus rendered invalid. There are many kinds of Receipts. The following are a few of the kinds in use :—

(1) Receipt for money, or services, or goods paid, in entire or partial settlement of an account or debt.
(2) Deposit Receipt, as per page 84.
(3) Warehouse Receipt.
(4) Shipping Receipt.
(5) Bills of Lading.

2. Explicitness Necessary.—The carelessness of many business men in the drawing out of Receipts is simply suprising. They are frequently nothing more than a simple acknowledgement of money paid, without regard to the

purpose or reason for which it was paid, or to the application of such payment.

Every Receipt should state explicitly the intention of the parties respecting the application of the payment; and should give all reasonable particulars regarding it. For example: Smith pays $10 to Jones, for rent. Now the Receipt given by Jones should not only state that the $10 was for rent, but should state what particular month the rent was for; also the property on which the rent was paid. Too much care cannot be exercised in drawing business papers of this class.

3. Preservation of Stubs of Receipts.—Every careful business man will get his Receipts printed and bound in book form, with a stub attached, on which to write particulars of the Receipts given, such as :—

(1) The date and number.
(2) The name and address.
(3) The amount of money or description of goods.
(4) The purpose for which the money was paid.

It is not uncommon for persons to claim that they have Receipts for money that they never paid. A claim of that kind can easily be silenced, if you can refer to the stubs of your Receipts.

4. Forms of Receipts.—The following are a few of the forms in common use. (The form of a Deposit Receipt will be found on page 70.)

Receipt for Rent:

No. 62. WATERLOO, FEB. 1, 1902

Received from M. D. McKinnon, the sum of Thirty-five Dollars, ($35,) being payment of Rent of house No. 638, Main street, for the month of Jan. last.

$35. JAMES ROBERTSON.

Receipt for payment on Account:

No. 721. LATONA, Feb. 28, 1902.

Received from Alex. P. Ledingham the sum of Fifty Dollars, on account.

$50. JNO. K. MCGILLIVRAY.

Receipt in full of Account :

No. 97. SULLIVAN, MARCH 1, 1902.

Received from John Halliday, the sum of Fifteen $\frac{42}{100}$ Dollars, being payment in full of account to date.

$15.42. CHRISTOPHER ROBERTSON.

Receipt in full of all demands :

No. 246. HOLLAND, March 15, 1902.

Received from James Robertson, Forty-one $\frac{28}{100}$ Dollars, being payment in full of all demands to date.

$41.28. W. B. BRENNAN.

Receipt for Taxes :

No. 427. KILSYTH, NOV. 28, 1902.

Received from James Cochrane, the sum of Twenty-nine $\frac{13}{100}$ Dollars, being payment of Taxes on lot No. 7 in the 7th concession of the Township of Derby, for the year 1902.

$29.13. B. WILKINSON, Collector.

Receipt for Promissory Note :

No. 29. KEADY, May 1, 1902.

Received from Alex. Garvie, his Promissory Note in my favor, dated March 15th, for Sixty-two $\frac{40}{100}$ Dollars, payable three months after date, at the Merchants Bank, Owen Sound, in full of account.

$62.40. WM. BEATON.

(Endorsement Receipt for money paid on a note, To be written across the back of the Note.)

KEADY, Aug. 1902.

Received on the within Note, Thirty Dollars.

$30. WM. BEATON.

Receipt for Title Deeds :

DESBORO, Jan. 30, 1902.

Received from Alex. Sinclair the following Title Deeds of lot No. 10, concession 7, in the Township of Derby, for safe keeping, said Deeds to be returned to him on demand :—

Deed, John Smith to Alex. Leslie, dated March 4, 1878.

" Alex. Leslie to Thos. Sloane, dated July 9, 1882.

Deed, Thos. Sloan to Paul Wardell, dated Feb. 4, 1886.
" Paul Wardell to Alex. Sinclair, dated March 4, 1896.

WM. DOUGLAS.

5. Releases.—A Release is a written discharge of a claim, debt or demand, held against one person by another. It is given under seal, and will cancel any debt, whether acknowledged or not.

No special form of words is necessary, all that is necessary is that the words convey the intention to release, acquit and discharge the person from the debt.

Releases are made (1) *Individual*—By one person releasing another from a debt or demand.

(2) *Mutual*—Where two persons have been trading with one another, and have contra accounts. When a settlement is made, they frequently release one another from all demands.

6. Form of General Release given Mutually—

THIS INDENTURE, made the 15th day of March, A.D. 1902, between Henry Ballard of the first part: and James Fairfield of the second part.

Whereas, there have been divers accounts, dealings and transactions between the said parties hereto respectively, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have respectively agreed to give each other the mutual releases and discharges hereinafter contained in manner hereinafter expressed.

Now therefore these Presents witness, that in consideration of the premises and of the sum of One Dollar, of lawful money of Canada to each of them, the said parties hereto respectively paid by each of them at or before the sealing and delivery hereof, (the receipt whereof is hereby acknowledged), each of them the said parties hereto respectively, doth hereby for himself and herself respectively, his and her respective heirs, executors, administrators and assigns, remise, release and forever acquit and discharge the other of them, his and her heirs, administrators and assigns, and all his, her and their lands and tenements, goods, chattels, estate and effects respectively whatsoever and wheresoever, of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have, or has, or ever had, or might or could have, against the other of them, or any account whatsoever, of and concerning any matter, cause or thing whatsoever between them, the said parties hereto respectively, from the beginning of the world down to the date of these presents.

In witness whereof the said parties have hereunto set their hands and seals.

Signed Sealed and Delivered in the presence of JOEL KRIBBS.

HENRY BALLARD, (L. S.)
JAMES FAIRFIELD, (L. S.)

7. Composition Deed.—When a person who is insolvent, settles with his creditors for smaller sums than his debts to each one, the creditors grant him a Release from such debts under seal. The Release is called a "Composition Deed." The following is a common form.

TO ALL PERSONS to whom these Presents may come, we who have hereunto set our hands and seals, creditors of John Shriver of the town of Brockville, send greeting. Whereas the said John Shriver is indebted to us his said creditors, in several sums of money, which he is not able fully to satisfy and discharge: We therefore have agreed, and do hereby agree, to accept the sum of Two Hundred Dollars in full payment and satisfaction of all the debts, owing to us respectively at the date hereof, by and from the said John Shriver, Which is paid by or for the said John Shriver to Andrew Storms, Sidney Warner and Billa Flint, for the use of and to the intent that the same may be shared and divided amongst us his said creditors, in proportion and according to the debts to us severally due and owing.

Now therefore know ye, that for the consideration aforesaid, each of us, the said creditors who have hereunto set our hands and seals, for him and herself, his and her heirs, executors and co-partners, doth by these presents, remise, release and forever discharge the said John Shriver, his heirs, executors and administrators, of and from our said several debts, and all, and all manner of action and actions, claim or demand, which against the said John Shriver, each and every of us the said creditors now hath, or which each and every of our heirs, executors or administrators, respectively, hereafter may, can or ought to have, claim or demand for, upon, or by reason of the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause or thing whatsoever from the beginning of the world.

In witness whereof the said parties hereto have hereunto set their hands and seals this 15th day of March, A. D. 1902.

Signed, Sealed and Delivered in the presence of MOSES FRY.

ANDREW STORMS, (L. S.)
SIDNEY WARNER, (L. S.)
BILLA FLINT. (L. S.)

CHAPTER 27.

INTEREST.

- Definition.
- The Elements of Cost.
- On What Allowed.
- Legal Rate.
- Any Rate May be Agreed Upon.
- Compound Interest.
- Discount.

1. **Definition.**—The popular definition of Interest is "*Money paid for the use of money.*" To be a little critical, we might observe that the money paid is *cash*, from a Book-keeper's view point, and this Cash is paid for *something* just the same as cash is paid for merchandise or anything else. It would be incorrect to call cash *bread*, because it was paid for a loaf of bread. We pay cash *for* interest—for the use of money.

The use of money is Interest, strictly speaking. It is usually calculated at a certain rate per cent. per year.

2. **The Elements of Cost.**—The elements that regulate the price of Interest at any particular time or place, are,—

(1) The real worth of the use of the money at the time. The standard for this element can be reckoned as the rate on Government or Municipal bonds or debentures, where the security is unquestionable, and the Interest paid regularly.

(2) The *risk* attending the lending of it. If there is any risk of losing it, the lender, who runs the risk, would expect pay for the risk, over and above ordinary rates.

(3) The supply and demand. Plenty of money and no person wishing to borrow, will produce a low rate. Scarcity of money and many persons wanting it, will produce a high rate.

3. **On What Allowed.**—There are three classes of cases where Interest is allowed, as follows :—

(1) Where it has been especially agreed upon. Example—an interest-bearing note.

(2) Where money is borrowed, or a debt is contracted, or money detained, although there is no expressed agreement, it is customary to pay Interest in such cases, at six per cent.

(3) Where a debt is not paid when it becomes due, it will bear interest after maturity at six per cent.

4. Legal Rate.—The legal rate in Canada is Six per cent. The meaning of this is,—

(1) That in case Interest is provided for, in a contract or bargain and no rate mentioned, the rate will be Six per cent.

(2) If a debt is not paid when due, Interest will be collectable at Six per cent. from the due date till paid. If a promissory note is not paid when due, and there is no interest stipulated in it, Six per cent. is collectable after maturity.

(3) If a note or bill of exchange stipulates for Interest without naming a rate, it will bear Interest from its date at Six per cent. until it is paid. If it shows an agreement for a higher rate than Six per cent., by such words as, "with interest from date at ten per cent. per annum," this will bring Interest at Ten per cent. till due, but only Six per cent till after maturity.

(4) If a note or bill is to draw Interest from its date until it is paid, at a higher rate than Six per cent., the agreement for such must be evidenced by such words as "with Interest from date, both before and after maturity, until it is paid at Ten per cent. per annum."

5. Any Rate may be Agreed Upon between the parties, and such an agreement is enforceable at law. There are no restrictions as to what persons may agree upon in the way of Interest. If I agree to pay you Two per cent. per month, that is 24 per cent. per annum, you can collect this amount, as there are no Usury Laws in Canada.

6. Compound Interest.—On Mortgage or Real Estate, Interest may be collected *on interest* in arrear, but not at any higher rate than what the mortgage itself bears. This must be agreed upon in the mortgage.

7. Discount is interest allowed for the payment of a debt before it is due. Although known by the name of "Discount," there is no difference between it and interest, and the majority of book-keepers put both into one account. If Smith holds a note against Jones for $100, due a year hence, and he sells it to Jones or any other person now, for $90, he simply gets the use of the money for a year, and pays for it with $10 for the note. It is the use of the money he pays for, the same as in Interest. There are two kinds of Discount, differing according to the mode of calculation:

(1) Bank Discount, which is the simple Interest taken off the face of the debt for payment before it is due; the amount remaining is called the *Present Worth.*

(2) True Discount, where Interest on the present worth only, is taken off the debt for payment before it is due.

CHAPTER 28

SALES OF PERSONAL PROPERTY.

1. Definition.—A sale of personal property is a transfer of ownership for a price payable in money. The money paid is the consideration. Since the Law of Contracts is largely the foundation of all Commercial Law, frequent references will be made to the foregoing chapters on Contracts, and some of the principles repeated.

2.—The Vendor is the name often given to the seller of property.

3.—The Vendee is the name for the purchaser or buyer of any property.

4.—Sale versus Barter.—The consideration for the property transferred in case of a sale is *money*. If A exchanges five cords of wood with B for a suit of clothes, it is a barter—not a sale. Money is the only standard of value, therefore no value can be established in a trade.

5. Necessary Points.—The seven requisites to a contract may be recalled, and applied to sales of Personal Property. (See Chapter 1, Section 10)

(1) It must be possible by existence of the property.
(2) It must be legal.
(3) The parties must be competent.
(4) It must be assented to by both parties.
(5) There must be a consideration or price.
(6) There must be no fraud.

(7) It must conform to the statute of frauds as to being evidenced by being in writing in some cases, or by a partial payment or partial delivery of the goods.

6. The Property Must Exist.—A sale of property can not take place unless the property actually exists. If it is *destroyed*, and the parties, not knowing anything of its destruction, sell and buy it, the sale is void. A sells B a certain piano. If the piano has already been burned, the sale is an impossibility.

7. The Property Must be Legally Saleable.—Any sale of property prohibited by statute is void. A sale of goods smuggled into the country, or manufactured in the country secretly without paying excise to which they are subject, is void. Stolen goods are not saleable, as the seller is not the owner and cannot give a better title than he has himself. The lawful owner can claim them wherever he finds them.

8. Competent Parties.—The goods must be the property of the seller, and he must be of legal age and sound mind, or the sale would be voidable.

9. Mutual Assent.—Both parties must be willing to transfer the property, and must agree as to the price. This is usually accomplished by an *offer* and an *acceptance*.

10. The Price is the consideration that moves the seller to part with his property. It must be payable in money.

11. Without Fraud.—As in any contract, so in a sale of property, fraud by misrepresentation or concealment, renders the sale voidable.

12. The Statute of Frauds provides that all sales of personal property under Forty Dollars ($40) may be made *verbally*. Over that amount they must be evidenced in some one of the following ways, by—

(1) A partial payment, (earnest money,) or
(2) A partial delivery of the goods, or
(3) Some memorandum of the bargain in writing to be signed by the parties chargeable therewith.

The memorandum may be of the simplest, yet if signed by the parties, it will comply with the statute. The following is a simple form:—

KILSYTH, Jan., 15, 1902.

D. Hilts buys from James Agnew, Sixty colonies of Italian bees, at Six dollars per colony.

D. HILTS.
JAS. AGNEW.

13. Evidence of a Sale.—Every sale of Personal Property should be evidenced in one of two ways:—viz: either

(1) By an actual, immediate, and continued change of possession; or

(2) The registration of a Bill of Sale within five days of the execution of Bill of Sale in the office of the Clerk of the County Court of the District. This applies to Ontario. The limitation of the time for registration or filing of a Bill of Sale to five days has been dispensed with in Manitoba, so that now filing and registration may be effected at any time—the instrument, however, taking effect from the date of filing or registration only, as against execution creditors, subsequent mortgages or purchasers.

Suppose A sells to B a horse for $80. It is expected that the horse would be removed forthwith from A's stable to B's stable, every person may then know of the change of ownership. If, however, the horse is to remain in A's stable, people generally could not know of the sale. If in any way the sale is not apparent by the property changing hands, it is necessary to register a Bill of Sale so that interested persons may be able to find out any change of ownership. This is especially necessary in case of a person selling out a stock of goods in a shop to another person, and still remaining in the shop and carrying on the business as usual. If the seller retain possession of an article after the sale of it, unless a Bill of Sale were registered, the statutory law presumes that there is fraud in the sale.

14. Sale must be Bona Fide.—There have been so many cases of attempt at fraud, before the Courts, on account of persons transferring their property to their friends, to save it from creditors, that the legislation has been made very stringent to prevent all pretended tranfers.

(1) The purchaser must make affidavit that the sale is *bona fide* for a consideration that is named in the affidavit, and not for the purpose of securing the property against the creditors of the seller.

(2) The witness to the execution of the Bill of Sale must make affidavit as to the proper signing, etc., of the document, and as to the date of the execution thereof.

15. Form of Bill of Sale—

THIS INDENTURE, made the 24th day of January, in the year of our Lord one thousand nine hundred and two;

BETWEEN William Kyle Ireland of the Town of Meaford, in the County of Grey and Province of Ontario, Bookseller and Stationer, the Vendor, of the First Part; and Henry Peter Adair, of the Town of Meaford aforesaid, salesman, the Vendee, of the Second Part:

WHEREAS the said party of the First Part is possessed of the Stock of Books and Stationery and shop fixtures herein set forth, described and enumerated, and hath contracted and agreed with the said party of the Second Part for the absolute Sale to him of the same, for the sum of Nine Hundred Dollars:

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of Nine Hundred Dollars of lawful money of Canada, paid by the said party of the Second Part to the party of the First Part, at or before the sealing and delivery of these Presents; (the receipt whereof is hereby acknowledged,) he, the said party of the First Part, HATH BARGAINED, sold, assigned, transferred, and set over, and by these Presents DOTH BARGAIN, sell, assign, transfer, and set over unto the said party of the Second Part, his executors, administrators and assigns,

ALL THESE the said Stock of Books and Stationery, and shop fixtures, as per inventory hereto attached, and marked "A,"

AND all the right, title, interest, property, claim and demand whatsoever, both at Law and in Equity, or otherwise howsoever, of him, the said party of the First Part, of, in, to, and out of the same, and every part thereof:

TO HAVE AND TO HOLD the said hereinbefore assigned books, Stationery, and shop fixtures, and every of them, and every part thereof, with the appurtenances, and all the right, title, and interest of the said party of the First Part thereto and therein, as aforesaid, unto and to the use of the said party of the Second Part, his executors, administrators, and assigns, to and for his and their sole and only use FOREVER;

AND the said party of the First Part, DOTH hereby for his heirs, executors, and administrators, COVENANT, PROMISE and AGREE with the said party of the Second Part, his executors and administrators, in manner following, that is to say, THAT he, the said party of the First Part, is now rightfully and absolutely possessed of, and entitled to, the said hereby assigned Books and Stationery, and shop fixtures, and every of them, and every part thereof:

AND that the said party of the First Part, now hath in himself good right to assign the same unto the said party of the Second Part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: AND that the said party hereto, of the Second Part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess, and enjoy the said hereby assigned property, and every of them, and every part thereof, to and for his own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever, of, from or by him the said party of the First Part, or any person or persons whomsoever: AND that free and clear, and freely and absolutely released and discharged, or otherwise, at the cost of the said party of the Frst Part, effectually indemnified from and

against all former and other bargains, sales, gifts, grants, titles, charges and incumbrances whatsoever :

And moreover, that he the said party of the First Part, and all persons rightfully claiming, or to claim any estate, right, title or interest, of, in, or to the said hereby assigned goods and fixtures, and every of them, and every part thereof, shall and will from time to time, and at all times hereafter upon every reasonable request of the said party of the Second Part, his executors, administrators or assigns, but at the cost and charges of the said party of the Second Part, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and fixtures unto the said party of the Second Part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these Presents, as by the said party of the Second part, his executors, administrators or assigns, or his Counsel, shall be reasonably advised or required.

In Witness Whereof, the said parties to these Presents have hereunto set their hands and seals, the day and year first above written.

Signed, Sealed and Delivered in the presence of W. J. Gray. — W. K. Ireland. (L.S.) — H. P. Adair. (L.S.)

Affidavit of the purchaser as to the sale being bona fide for value.

County of Grey, to wit — I, Henry Peter Adair, of the Town of Meaford, in the County of Grey, the Vendee in the foregoing Bill of Sale, make oath and say :

That the sale therein made is *bona fide*, and for good consideration, namely:—The sum of Nine Hundred Dollars, and not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors by the said bargainor.

Sworn before me at Meaford, in the County of Grey, this 24th day of January, A.D. 1902. — H. P. Adair.

C. R. Sing,

A Commissioner for taking affidavits in H. C. J.

Affidavit of Witness.—All Bills of Sale, Chattel and Real Estate Mortgages, Deeds of Land, &c,, require an affidavit of the person who witnessed the signatures, covering the following points as proofs of the proper and regular execution of the document :—

(1) That the witness was present and saw the signing, sealing, &c.
(2) The place where such execution was done, and date of execution.
(3) That he knows the parties to the contract.
(4) That he is the witness to the document.

Affidavit of witness, proving signing, sealing and delivery of the Bill of Sale.

ONTARIO: COUNTY OF GREY. TO WIT: I, William James Gray, of the Town of Meaford, in the County of Grey, gentleman, make oath and say: THAT I was personally present, and did see the within Bill of Sale duly signed, sealed and executed by Wm. Kyle Ireland and Henry Peter Adair, the parties thereto; AND that I, this deponent, am a subscribing witness to the same; AND that the name W. J. Gray, set and subscribed as a witness to the execution thereof, is of the proper handwriting of me the deponent; AND that the same was executed at the Town of Meaford, on the twenty-fourth day of January, A.D. 1902.

SWORN before me, at Meaford, in the County of Grey, this 24th day of January, A.D. 1902.

W. J. GRAY.

C. R. SING, *A Commissioner for taking affidavits in H. C. J.*

Note. *A full inventory of the stock of goods should be attached to the Bill of Sale. If only a few articles are sold, then they should be fully described in the Bill of Sale itself.*

CHAPTER 29.

SALES OF PERSONAL PROPERTY.

1. Time of Performance.—A sale of property may be

(1) Executed, if the articles sold are immediately transferred to the purchaser, and paid for; or,

(2) Executory, if the property is to be delivered or transferred at some future time. An executory sale is simply an agreement to sell. It is completed by the delivery of the goods. Its time of completion depends on the terms of the bargain. It may depend on the happening of some event, such as the payment of the goods.

2. Executed Sales.—In executed sales, there must be a delivery of the property, which may be—

(1) An Actual Delivery, where the property is portable and can be easily handled; or,

(2) A Constructive Delivery, where the article cannot be handled, and something is handed to the purchaser, that takes the place of the goods. The following are examples:—

(1) A Bill of Lading to represent goods in the hands of a Railway or Shipping Company;

(2) A Warehouse Receipt, representing goods stored;

(3) The key of the storehouse where the goods are kept.

In case of delivery by Bill of Lading or Warehouse Receipt, an assignment should be endorsed on it.

3. Executory Sales are those not performed at the time of making an agreement to sell. It was noted in the previous chapter that the property must *exist* when the contract is made. I might agree to sell you a mowing machine, to be delivered on the 10th of June next. If that machine is now in existence, it is an agreement to sell. If I agree to make a machine, and deliver it to you on the 10th of June next, you have made a contract with me for *labor* and *material*, and not a contract of sale. In an executory sale, the seller runs all risk until he has transferred the title to the buyer. If the mowing machine above referred to, were destroyed by fire before I delivered it to you, it would be my loss.

Executory sales are frequently *conditional*. Of these we might mention

(1) Sales on trial;

(2) Sales by sample or description;

(3) Sales of goods in transit.

In a conditional sale, the title of the property does not pass to the purchaser until the conditions are fulfilled.

4. Sales on Trial.—Very frequently sales are made, conditioned on the article suiting the purchaser, or doing some specified kind of work. There should be a specified time for trial mentioned in the agreement. The loss by wear or consumption during the period of trial falls upon the seller, as he is still the owner. Though the prospective purchaser has *possession*, he has not any title. If he does not approve of the article, he must return it to the seller, or notify the seller to remove it. If he does not return it, or give notice that it does not suit, within the specified time, the sale is completed. A offers to sell to B a sewing machine for $30, but to give it to him on trial for a month; B must reject the machine within the month, or he is bound to keep it.

5. Sales by Sample or Description.—Sales are often made by sample. X shows Y a sample bushel of apples, and sells him 1000 bushels of such apples. There is an express warranty, that the 1000 bushels of apples, when delivered, will be just such apples as shown, in kind and quality. This expressed or implied warranty is the condition of the sale. If X tries to deliver another kind or quality of fruit, Y may refuse it, or give notice to the seller to that effect. In sales by description, written or verbal, goods must correspond to the description. Commercial travellers make almost all the wholesale sales either by sample or description.

6. Sale of Goods in Transit.—Goods in transit by boat or rail may be sold, the condition being that the goods arrive as expected. If the title of the goods has been transferred by endorsement of a Bill of Lading, the sale is not a conditional sale, but a sale absolute.

7. Credit.—Unless otherwise provided, the price in any sale is payable in cash, immediately. If credit is given, it must be a condition of the bargain. In an ordinary sale on credit, such as M selling N a suit of clothes at $20, to be paid in a month, the ownership passes from M to N immediately, M receiving in return the right to charge N on his books. M has no further claim or lien upon the clothes. They become N's property. M could not recover the clothes from N for non-payment.

8. Conditional Sales.—There are a great many sales of machines, etc., by manufacturers and their agents, on the "instalment plan." The seller gives the purchaser possession, but not ownership; he retains the title until the property is all paid for. Such payments or instalments are to be considered a rental until the whole purchase money is paid, then the owner relinquishes his lien, and the article becomes the property of the purchaser. The note form in Chap. 15, Sec. 6, is an example of the note usually taken in such a case.

By Ontario Statute:

(1) In Ontario the seller must leave a copy of such note with the purchaser, but not so in Manitoba.

(2) The manufacturer's name must be on the article.

(3) The holder of such lien must furnish a statement of claim when asked for it. (See further particulars, chapter 15, sections 5, 6, 7 and 8).

The above provisions are for the purpose of preventing fraud on the part of the purchaser, who has possession of the article, by selling the article to some person who does not know that he has no title.

9. Warranty—Definition.—Warranty is the undertaking of the seller of the goods sold:

(1) As to Title;
(2) As to Quality.

10. Warranty as to Title.—It is implied, when a person attempts to dispose of goods, that he has a good title to them; if he has not, the rightful owner can take them, even if sold a hundred times. A right of action, however, lies against the person who fraudulently disposed of another's property. If the seller has not the article in possession, and does not expressly say that he is the owner, the purchaser takes the risk of title. The lack of possession should be warning enough to him that the title may be defective.

11. Warranty as to Quality may be

(1) Expressed;

(2) Implied.

Expressed Warranty is such statements as have been made as to the quality of goods. These statements must be made at the time of making the sale. Statements made a day before, or an hour before, if negotiations were discontinued in the meantime, would not apply as warranties. If the purchaser examines an article before purchasing, he is supposed to see manifest defects in the article. When he examines it himself, he takes the risk on himself, unless he has an expressed warranty besides. It is well to remember the maxim—"*Caveat Emptor*," meaning, "Let the purchaser beware."

12. Implied Warranty.—In sales by sample, there is an implied warranty that the articles are as good as the sample. If articles are ordered for a *purpose*, the goods, by implied warranty, should be suitable to such purpose. If I ask a dealer for ink suitable for marking clothing, and he supplies me with ink, there is an implied warranty that the ink is indellible, and otherwise suitable for the purpose. I trust to his judgment, not to my own; he takes the responsibility.

13. Stoppage in Transitu is the right of a person selling chattels or goods on *credit* to stop them while in transit by common carriers, such as boats, railroads, etc. Goods cannot be stopped in transit unless the seller has found out since the goods were shipped that the purchaser is insolvent.

EXAMPLE—X sells a quantity of goods to Y, but finds out after shipment that Y is insolvent. If these goods are in the hands of the common carrier, they may be stopped before they are delivered, by giving notice to the company in whose possession they are, not to deliver them. The conditions to such a stoppage are,

(1) The goods sold being actually in transit, not delivered to the buyer, in fact, or by Bill of Lading;

(2) The buyer must be indebted to the seller for the purchase price;

(3) The buyer must be insolvent.

If the seller stops the goods unlawfully while in transit, he may be required

(1) To deliver the goods ;
(2) To indemnify the purchaser for loss.
(3) To indemnify the purchaser for damages caused by delay of delivery.

14. Annulment of Sale.—A sale may be annulled on the following grounds :—

(1) Mutual mistake, as where both parties fail to understand one another, they perhaps thinking of different articles when making the contract ;
(2) Fraud by either party, by misrepresentation or concealment of fact;
(3) Breach of warranty. A sells a horse to B, warranted to be sound and quiet. If he does not fill the bill, B may refuse to take him;
(4) Failure of consideration, either by a failure in title or in quality ;
(5) Illegal. If the sale is illegal,
  (*a*) As to the articles bought or sold ;
  (*b*) As to the purpose ;
  (*c*) If the consideration is illegal.

CHAPTER 30.

CHATTEL MORTGAGES.

- Definition.
- The Effect.
- Description of Property.
- Must be *Bona Fide* Transaction.
- Registration.
- Limitation as to Place.
- Limitation as to Time.
- Limitation as to a Debt.
- Form of Chattel Mortgage.
- Mortgage to Secure an Endorser.

1. Definition.—A Chattel Mortgage is a conditional grant or conveyance of goods, chattels, or personal property, by a debtor to a creditor, as security for the payment of a debt. By derivation the word mortgage signifies a death grip. (*Mors*, death; *gage*, a grip, or grasp.)

(1) The person borrowing money, or the debtor, is called the mortgagor.
(2) The person lending the money to the creditor is called the mortgagee.

2. The Effect of a Mortgage is the same as a Bill of Sale. It is practically a Bill of Sale, in which there is a provision that the seller (the mortgagor) may

buy back again. It is a conveyance of the title, though not of the possession of the property—the mortgagor still retains possession of the property. The mortgagee may take possession of the property on breach of any of the covenants.

3. Description of Property.—In a Chattel Mortgage, the animals or articles mortgaged, should be carefully described, so that any bailiff or officer could identify them from the description. In describing an animal, give age, color, sex, name, strain of breed, and any particular marks or spots. In describing a machine or implement, give manufacturer's name and number, color, condition, etc.

Example (1) One grey Percheron horse, named Bob, 16½ hands high, 5 years old, with both hind feet white, and small white spot on forehead.

Example (2) One self-binder, Harvest Queen, manufactured in 1901, by Massey Manufacturing Company, painted brown and grey, with red stripes, in first-class condition, numbered 2637.

4. Must be Bona Fide Transaction.—Every chattel Mortgage must be proved to be *bona fide*, and not for the purpose of defrauding creditors, by the mortgagee taking an affidavit, relative to it, covering the following points:

(1) That the mortgagor is truly indebted to the mortgagee in the whole sum mentioned in the mortgage.

(2) That it is made in good faith, for the express purpose of securing the debt due.

(3) That it is not for the purpose of securing the goods against the creditors of the mortgagor.

5. Registration.—Every Chattel Mortgage must be registered in the office of the Clerk of the County Court, in the County where the property is, within *five days* after its execution, or it will not be effectual to hold the property against any subsequent purchaser, etc. It would be good only as evidence of a debt between the parties. In Manitoba, there is no limitation as to the time for the filing or registration of a Chattel Mortgage. It may be done any time. If a Chattel Mortgage is not registered or filed, it is good as evidence of a debt as between the mortgagor and mortgagee, but it will not hold the property.

6. Limitation as to Place.—Chattel Mortgages only hold the property in one County, viz., the County where they are registered; and every Chattel Mortgage contains a covenant that the property will not be removed from the County where it is situate. If it is agreeable to both parties that the property be removed to another County, then the Mortgage should be transferred to

the office of the Clerk of the County Court where the property has been taken to. If property is removed without consent, it may be seized and sold to satisfy the mortgage.

7. Limitation as to Time.—A Chattel Mortgage, in Ontario, holds the property for one year only. At the end of that time the property is free, unless a new mortgage is made, or a renewal of the old one registered by the mortgagee within a year of the registration of the mortgage. In Manitoba, a Chattel Mortgage holds the property for two years; and a renewal extends the mortgagee's rights for two years longer.

8. Limitation as to a Debt.—Though the Chattel Mortgage holds the property for one year only, in Ontario, and two years in Manitoba, yet it is good as evidence of a debt for twenty years in Ontario, and ten years in Manitoba, because it is under seal. Great care should be exercised in drawing a Chattel Mortgage, as very slight mistakes render it inoperative in holding the property.

9. Form of Chattel Mortgage.—

THIS INDENTURE, made (in duplicate) the twenty-seventh day of February, one thousand nine hundred and two;

BETWEEN Richard Kirby of the Township of Normanby, in the County of Grey, and Province of Ontario, student, hereinafter called the MORTGAGOR, of the First Part; and John Henry Moore, of the Township of Normanby aforesaid, gentleman, hereinafter called the MORTGAGEE, of the Second Part:

WITNESSETH that the Mortgagor, for and in consideration of One Hundred Dollars of lawful money of Canada, to him in hand well and truly paid by the Mortgagee, at or before the sealing and delivery of these Presents, (the receipt whereof is hereby acknowledged,) HATH Granted, Bargained, Sold and Assigned, and by these Presents DOTH Grant, Bargain, Sell, and Assign unto the Mortgagee, his executors, administrators, and assigns, ALL AND SINGULAR the Goods, Chattels, Furniture, and Household Stuff hereinafter particularly mentioned and described, viz:—

One black horse, named Ben, with small white spot on forehead, four years old, fifteen hands high:

One lumber waggon, in good condition, with running gear painted red and box green, with spring seat, shelving, whippletrees, and neck-yoke, manufactured by the Speight Manufacturing Company of Markham, and numbered 4627, all of which said goods and chattels are now lying and being on the premises situated in the Township of Normanby aforesaid, on lot number seven, in the fourth concession of the said township.

TO HAVE AND TO HOLD all and singular, the said goods and chattels, furniture and household stuff, unto the Mortgagee, his executors, administrators and assigns, TO THE ONLY PROPER USE AND BEHOOF of the Mortgagee, his executors, administrators and assigns, FOREVER:

PROVIDED ALWAYS, and these Presents are upon this express condition, that if the Mortgagor, his executors, or administrators, do and shall well and truly pay or cause to be paid unto the Mortgagee, his executors, administrators or assigns, the full sum of One Hundred Dollars, with interest for the same at the rate of eight per centum per annum, on the thirty-first day of October, 1902:

THEN THESE PRESENTS, and every matter and thing herein contained, shall cease, determine, and be utterly void to all intents and purposes, anything herein contained to the contrary thereof in anywise notwithstanding;

AND the Mortgagor, for himself, his executors, administrators, shall and will warrant and for ever defend by these Presents ALL AND SINGULAR the said goods, chattels and property, unto the Mortgagee, his executors, administrators and assigns, against him the Mortgagor, his executors and administrators, and against all and every other person or persons whomsoever.

AND the Mortgagor doth hereby for himself, his executors and administrators COVENANT, PROMISE and AGREE to and with the Mortgagee, his executors, administrators and assigns, that the Mortgagor, his executors or administrators or some or one of them, shall and will well and truly pay, or cause to be paid unto the Mortgagee, his executors, administrators or assigns, the said sum of money in the said proviso mentioned, with interest for the same as aforesaid, on the day and time and in the manner above limited for the payment thereof: AND ALSO IN CASE DEFAULT SHALL BE MADE IN THE PAYMENT of the said sum of money in the said proviso mentioned, or of the interest thereon, or any part thereof; or in case the Mortgagor shall attempt to sell or dispose of, or in anyway part with the possession of the said goods and chattels, or any of them, or to remove the same or any part thereof out of the County of Grey, or suffer or permit the same to be seized or taken in execution without the consent of the Mortgagee, his executors, administrators or assigns to such sale, removal or disposal thereof first had and obtained in writing: THEN and in such case it shall and may be lawful for the Mortgagee, his executors, administrators or assigns, with his or their servant or servants, and with such other assistant or assistants as he or they may require, at any time during the day, to enter into and upon any lands, tenements, houses and premises wheresoever and whatsoever where the said goods and chattels, or any part thereof may be, and for such persons to break and force open any doors, locks, bars, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures, and places, for the purpose of taking possession of and removing the said goods and chattels: AND upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the Mortgagee, his executors, administrators or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them, or any part thereof, at public auction or private sale, as to them or any of them may seem meet: AND from and out of the proceeds of such sale, in the first place to pay and reimburse himself or themselves, all such sums, and sum of money for principal, interest, insurance, and costs and expenses as may them be due by virtue of these Presents, and all such expenses as may have been incurred by the Mortgagee, his executors administrators or assigns, in consequence of the default, neglect or failure of the Mortgagor, his executors, administrators or assigns, in payment of the said sum of money, with interest thereon as above montioned, or in consequence of such sale or removal as above mentioned, and in the next place to pay unto the Mortgagor, his executors, administrators and assigns, all such surplus

as may remain after such sale, and after payment of all such sums of money and interest thereon as may be due by virtue of these Presents at the time of such seizure, and after payment of the costs, charges and expenses incurred by such seizure and sale as aforesaid ;

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the Mortgagee, his executors, administrators or assigns, to sell and dispose of the said goods and chattels, but that in case of default of the said sum of money with interest thereon as aforesaid, it shall and may be lawful for the Mortgagee, his executors, administrators or assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said goods and chattels, without the let, molestation, eviction, hindrance or interruption of him the Mortgagor, his executors, administrators or assigns, or any other person or persons whomsoever : AND the Mortgagor, doth hereby further COVENANT, PROMISE and AGREE to and with the Mortgagee, his executors, administrators and assigns, that in case the sum of money realized under any such sale as above mentioned, shall not be sufficient to pay the whole amount due at the time of such sale, that the Mortgagor, his executors, administrators shall and will forthwith pay or cause to be paid unto the Mortgagee, his executors, administrators and assigns, all such sum or sums of money with interest thereon as may then be remaining due :

AND the Mortgagor doth put the Mortgagee in the full possession of said goods and chattels by delivering to him, this Mortgage, in the name of all the said goods and chattels, at the sealing and delivery hereof :

AND the Mortgagor COVENANTS with the Mortgagee that he will during the continuance of this Mortgage, and any and every renewal thereof, INSURE THE CHATTELS hereinbefore mentioned against loss or damage by fire in some insurance office (authorized to transact business in Canada) in the sum of not less than One Hundred Dollars, and will pay all premiums and moneys necessary for that purpose as the same becomes due, and will on demand assign and deliver over to the said Mortgagee, his executors and administrators the policy or policies of insurance and receipt thereto appertaining ; PROVIDED that if on default of payment of said premium or sums of money by the Mortgagor, the Mortgagee his executors or administrators may pay the same, and such sums of money shall be added to the debt hereby secured, (and shall bear interest at the same rate from the day of such payment,) and shall be repayable with the principal sum hereby secured.

IN WITNESS WHEREOF the parties to these Presents have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED In the Presence of R. B. COCHRANE. } RICHARD KIRBY. (L.S.)

Affidavit of Mortgagee that the transaction is a bona fide one.

ONTARIO : COUNTY OF GREY. TO WIT } I, John Henry Moore, of the Township of Normanby in the County of Grey, gentleman, the Mortgagor in the foregoing Bill of Sale by way of Mortgage named, make oath and say : That Richard Kirby, the Mortgagor in the foregoing Bill of Sale by way of Mortgage named, is justly and truly indebted to me, this deponent, John Henry Moore the Mortgagee therein named, in the sum of One Hundred Dollars mentioned therein. That the said Bill of Sale by way of Mortgage was excuted

in good faith, and for the express purpose of securing the payment of the money so justly due or accruing due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the Bill of Sale by way of Mortgage against the creditors of the said Richard Kirby, the Mortgagor therein named, or preventing the creditors of such Mortgagor from obtaining payment of any claim against HIM. *

SWORN before me at Normanby in the County of Grey, this 27th day of February in the year of our Lord, 1902. } J. H. MOORE.

DALTON MCCARTHY,

A Commissioner for taking affidavits in the H. C. J.

*NOTE. If this word is incorrectly filled in or left out entirely, the Mortgage will not hold the property as against subsequent Mortgages, etc.

Affidavit of witness to the execution of the Mortgage.

ONTARIO: COUNTY OF GREY, TO WIT: } I, Richard Bernard Cochrane of the Township of Normanby, in the County of Grey, farmer, make oath and say: That I was personally present and did see the within Bill of Sale by way of Mortgage duly signed, sealed and delivered by Richard Kirby one of the parties thereto; and that the name R. B. Cochrane set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent; and that the same was executed at the Township of Normanby, in in the said County of Grey, on the 27th day of February, A. D., 1902.

SWORN before me at Normanby, in the County of Grey, this 27th day of February, A.D., 1902. } R. B. COCHRANE.

DALTON MCCARTHY,

A Commissioner for taking affidavits in H. C. J.

RECEIVED on the day of the date of this indenture, from the Mortgagee, the sum of One Hundred Dollars mentioned.

WITNESS, R. B. COCHRANE. } RICHARD KIRBY.

10. Mortgage to Secure an Endorser.—There is a form a Chattel Mortgage in common use, to be taken by a person who endorses or becomes security for another. The endorsing of the note is the consideration. The form differs very little from the ordinary form, and any one who can fill up one, can fill up the other.

(1) The Mortgage must state its purpose—to secure the endorser.

(2) It must be sworn to by the mortgagee and the witness, the same as the ordinary form.

(3) The note on which the endorsement is, must be copied out in full on the mortgage.

CHAPTER 31.

CHATTEL MORTGAGES, RENEWAL, DISCHARGE, &c.

1. Renewal of Chattel Mortgage.—As intimated in a previous section, a Chattel Mortgage may be renewed by the mortgagee, without the consent of the mortgagor, by the mortgagee registering in the office of the Clerk of the County Court a sworn statement of the amount still due on the mortgage, for principal and interest. This statement should show :

(1) The Principal ;
(2) The Interest ;
(3) The payments ;
(4) The balance still due.

The affidavit should verify the following points :—

(1) That the statement showing such a balance is true.
(2) That the mortgage is not kept on foot for any fraudulent purpose.

2. When and Where Registered.—The renewal should be registered where the mortgage was, within *five days* of its execution. It should be made out before the expiration of the mortgage, within a year from the date of filing of the mortgage. In Manitoba, the renewal must be registered within the thirty days next preceding the expiration of the term of two years from the day of the filing of the Chattel Mortgage, or a renewal thereof. There is no limitation of five days for registration as in Ontario.

3. Time of Extension.—A renewal extends the time of holding the property for one year in Ontario, and two years in Manitoba. The time may be extended from year to year by registering yearly, a sworn statement of claim as above described, and every two years in Manitoba.

4. Form of Renewal:—

STATEMENT exhibiting the interest of John Henry Moore in the property mentioned in a Chattel Mortgage, dated the 27th day of February, 1902, made between Richard Kirby, of the Township of Normanby, County of Grey, of the one part; and John Henry Moore, of the Township of Normanby aforesaid, of the other part, and filed in the office of the Clerk of the County Court of the County of Grey, on the first day of March, 1902, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

THE said John Henry Moore is still the Mortgagee of the said property, and has not assigned the said Mortgage. One payment has been made on account of the Mortgage.

THE amount still due for principal and interest on the said Mortgage is the sum of Seventy Dollars, computed as follows:

Principal.....	$100 00
Interest 1 year, to February 27th, 1902	8 00
	$108 00
——Cr.——	
By Cash, February 27th, 1902.....	38 00
Balance due	$70 00

Affidavit of Mortgagee as to correctness of statement and balance.

COUNTY OF GREY: TO WIT: I, John Henry Moore, of the Township of Normanby, in the County of Grey, the Mortgagee named in the Chattel Mortgage mentioned in the annexed statement, make oath and say:

1. That the annexed statement is true;
2. That the Chattel Mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

SWORN before me at the Township of Normanby, in the County of Grey, this 27th day of February, A.D. 1902. J. H. MOORE.

J. W. FROST, *A Commissioner for taking affidavits in H. C. J.*

5. Renewal versus New Mortgage.—If the property pledged has not grown less valuable, it is better to renew a mortgage than make a new one, because another may have been made on the same property in the meantime, and if a new mortgage is made, the first would become a second mortgage. If the old mortgage was kept on foot, it would remain a first mortgage.

6. Assignment of Chattel Mortgage.—If a Chattel Mortgage is sold by the mortgagee to another party, it is done by a formal assignment, as it is not a negotiable instrument. The assignment should be registered where the mortgage is registered.

7. **Discharge of Chattel Mortgage.**—The proper receipt for the payment of a Chattel Mortgage is a Discharge of Chattel Mortgage, an instrument under seal that releases the property and cancels the debt. It requires a sealed instrument to cancel a sealed instrument. Many persons do not take the trouble to have their Chattel Mortgages legally discharged, but simply get the mortgage returned. This creates a *presumption* that the debt has been paid. A release is much better evidence of the payment of the debt.

8. Affidavit of Witness.—The witness to the signature on the Discharge of Mortgage must make an affidavit to the execution of the Discharge, before it can be registered.

9. Registration.—The registered mortgage is a matter of public record. The discharge of it should be just as much a matter of public record, to cancel the debt, hence the Discharge should be registered in the office of the Clerk of the County Court where the mortgage is.

10. Form of Discharge of Chattel Mortgage:

CANADA.

To the Clerk of the County Court of the County of Grey:

I, John Henry Moore, of the Township of Normanby in the County of Grey, Gentleman,

Do Certify that Richard Kirby, of the Township of Normanby, County of Grey, Province of Ontario, student, has satisfied all money due on, or to grow due on a certain Chattel Mortgage made by Richard Kirby aforesaid, to John Henry Moore, of the Township of Normanby aforesaid, which Mortgage bears date the twenty-seventh day of February, A. D. 1902, and was registered in the Office of the Clerk of the County Court of the County o Grey on the first day of March, A.D. 1902, as No. 6743, and that such Mortgage has not been assigned.

That I am the person entitled to receive the moneys, and that such Mortgage is therefore discharged.

Witness my hand this twenty-fifth day of May, A.D 1902.

Andrew Greer. } J. H. Moore.

Affidavit of witness as to execution of Discharge.

COUNTY OF GREY, TO WIT: } I, Andrew Greer, of the Township of Normanby, County of Grey, Province of Ontario, Student-at-Law, make oath and say:

1. That I was personally present and did see the within instrument duly signed, sealed and executed by John Henry Moore, one of the parties thereto.
2. That the said Instrument was executed at the Township of Normanby.
3. That I know the said parties.
4. That I am a subscribing Witness to the said Instrument.

SWORN before me at Normanby, in the County of Grey, this twenty-fifth day of May, A. D. 1902. } ANDREW GREER.

S. BLAKE,

A Commissioner for taking Affidavits in H. C. J.

CHAPTER 32.

REAL ESTATE.

- DEFINITION.
- RIGHTS TO REAL ESTATE.
- OWNER'S RIGHTS.
- RIGHTS OVER OTHER PERSONS' PROPERTY.
- FEE SIMPLE.
- JOINT OWNERSHIP.
- DOWER.
- NO DOWER IN MANITOBA.
- LIFE OWNERSHIP.
- FUTURE OWNERSHIP.
- RIGHTS OF WAY.
- RESTRICTIVE RIGHTS.
- IN TRUST.

1. Definition.—Real Estate is such property as is permanent, fixed and immovable, comprising lands, tenements and corporeal hereditaments thereon. The word *land* comprises all substantial and permanent objects, including not only all soil and earth, but all houses, castles, etc., and also all things which grow naturally and without cultivation in the soil, as well as water covering the soil. Growing crops such as wheat, corn, potatoes, and all crops or fruit, the result of annual labor, are chattels. Trees sold to be removed forthwith, such as trees sold to lumbermen, are chattels. If trees are sold to be removed any time at the purchaser's option, they are real estate. Coal in a mine in its natural condition is real estate, but what has been mined is a chattel.

2. Rights to Real Estate are of two kinds:—

(1) Those the owner has over his own land (See No's. 1, 2, 3, 4, below)

(2) Those a person has over the land of others. (See No's 5, 6, 7, 8, below.)

Rights in Possession.
- (1) Fee simple.
- (2) Joint ownership.
- (3) Dower interest.
- (4) Life ownership.

Rights in Property of Others.
- (5) Future ownership.
- (6) Rights of way, etc.
- (7) Restrictive rights.
- (8) In trust.

3. Owner's Rights.—The right over one's own property includes not only the land itself, but everything built or growing thereon, or firmly fixed thereon, as a fence, etc., the right of the owner to use them and all their appurtenances, such as keys, windows, etc. It also includes his right to enjoy them for himself, and to expel any other persons from them, and to use force, if necessary, to put them off.

4. Rights over other persons' Property.—This includes such as the right of way over another's property, for use as a road, lane, etc.; the right to cut wood, draw water from a spring, fish in a stream, etc.

5. Fee Simple is where a man holds land, tenements, etc., to himself and his *heirs* without condition. He can sell it, or give it away by deed, or give it away by will, or allow his heirs to enjoy it after him. He can destroy or pull down the buildings, so long as he does not interfere with the rights, or injure the property of his neighbors.

6. Joint Ownership. Where two or more parties own a piece of property jointly, there is a joint ownership, and all persons owning jointly have a right to it at the same time. This class off ownership occurs:—

(1) Where a syndicate of persons combine to purchase and hold, speculatively, a portion of land.

(2) Where a person dies without a will, his heirs have a joint interest.

The several persons who are joint owners have equal shares, unless provided for otherwise in the document creating the joint ownership.

Joint walls built by two parties on the dividing line between two properties is another example of joint ownership. Neither can take away, even the part on his own land, without the consent of the other party.

7. Dower.—Where the husband dies possessed of an estate or inheritance, his widow shall have ⅔ of said lands and tenements, to hold during the term of her natural life. This is called *Dower*. A Dower is only available after the death of a husband, and is not subject to will, by the wife, before the husband's decease.

8. No Dower in Manitoba.—The Province of Manitoba is an exception in dower law, as no married women has a dower interest in her husband's lands. He may convey property without her consent. A married woman may hold real estate in her own name, and convey it without the concurrence of her husband.

All deeds, mortgages and leases in Manitoba are made in pursuance of the Act respecting Short Forms of Indentures. In Ontario such documents are made in pursuance of Acts respecting Short Forms of "Conveyances," "Mortgages," or "Leases".

9. Life Ownership is one where the person has the use of property during his natural life. An ownership of this kind is usually acquired by gift or will, which provides for the disposal of the property at the death of the owner of the life interest. It is an ownership sometimes retained by a father for his life time, in his homestead, when giving a son a future ownership in the property.

(1) He cannot sell or mortgage the property;

(2) He cannot destroy or decrease the value of it by removal of buildings, etc.

(3) He cannot control the disposition of it at death.

He may, during his life-time:—

(1) Use and enjoy it himself.

(2) Rent it to others, and enjoy the rents, profits and emoluments derivable therefrom.

(3) Sell the use of the property for his life-time only. At the death of such a holder the property passes on to the next holder.

10. Future Ownership is one where the possession and enjoyment of property depends on some event in the future. Suppose a person has a life interest in the property, as outlined in the next preceding section, and that at his death the property is to pass to F. W. Bale, Mr Bale would have a future ownership until the event shall happen. He could only convey such an interest as he had, not a full title. This is called an Estate in remainder, or reversion.

11. Rights of Way.—A person has a piece of property, removed from roads or streets, he may pay a neighbor a sum for the use of a part of his prop-

erty, to use as a lane for ingress and egress to his property. He acquires rights over the other's property that are valuable—a right of way. They are restrictive over the other person, as he cannot build on or obstruct the passage over such land.

12. Restrictive Rights.—Property is sometimes conveyed with rights reserved to the owner, such as, that houses built on the property must be placed a certain distance from the street, or built of certain materials, or of certain value, etc. This is a restrictive ownership that is exercised over the property of others. Other examples, those that bar the sale of alcoholic liquors on the premises, or exclude Chinese or Colored People from occupying or owning the land.

13. In Trust.—Property is frequently conveyed to a person in trust, for the use and benefit of another person. Such a person is called a trustee. He is only holding property for others; and his wife, if he has one, does not acquire any dower in the lands. The trustee may have power to collect rents, or sell the property, or invest such rents or purchase money. He does nothing with the property for his own personal benefit. The person for whose benefit the trust is held cannot exercise any power of conveyance over it, not even sell the right to receive the income from it.

CHAPTER 33.

REAL ESTATE.

Sales of Real Estate.

- Definition.
- Evidence of Contract.
- Description of Land.
- Parties.
- In Duplicate.
- Executory Sale.
- Form of Agreement for Sale.
- Sealing.
- Corporation Deeds, Etc.
- Delivery.
- Affidavit.
- Registration.
- Order of Registrations.
- Abstract of Title.
- Searching a Title.

1. Definition.—A sale of Real Estate cannot, like a sale of a chattel, such as a coat or a spade, be completed by the actual delivery of the article, —by the actual, immediate and continued change of possession: Therefore,

like the sale of personal property not delivered, it must be evidenced by a written agreement. The transaction must be completed by a document, commonly known as a Deed.

Sales are of two kinds:—

(1) Executory, when possession is passed by agreement for sale, but title is not passed until full payment has been made.

(2) Executed, where the sale has been completed by the execution and delivery of Deed. By Deed we mean what is popularly understood as a Deed, an absolute conveyance, not the legal use of the word which would mean any document under seal.

2. Evidence of Contract.—No verbal or ordinary written agreement is binding, when made respecting Real Estate, or any interest in Real Estate. Every such contract must be evidenced by a *Contract in writing, and under seal.* A verbal agreement, even where earnest money is paid, will not hold Real Property.

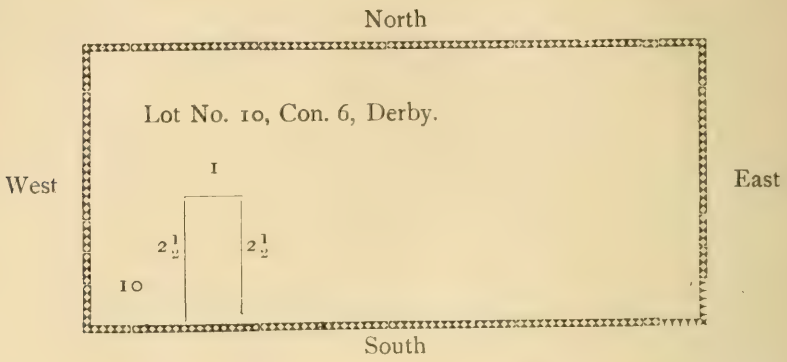
3. Description of the Land.—An essential part of the Deed is the description of the land. If the piece of land is a whole lot in town or township, very little trouble will be experienced in making a clear description.

EXAMPLE—"All and singular that certain parcel or tract of land and premises situate lying and being in the Township of Derby, in the County of Grey, containing by admeasurement Two Hundred acres more or less, composed of lot number ten in the sixth concession of the Township of Derby aforesaid."

If half or a quarter of a lot is to be described, the foregoing can be easily arranged to suit by writing "the North half of, etc.," or "the South half of, etc.," or "North west quarter, etc. If the piece of land is somewhere in the lot, a surveyor's description should be procured that will give the metes and bounds and magnetic bearings,—

If a surveyor's description cannot be had, a piece of land, the boundaries of which run parallel to the boundaries of the lot from which it is taken, may be described thus; "All and singular, that certain tract or parcel of land situate, lying and being in the Township of Derby, in the County of Grey, and Province of Ontario, containing by admeasurement one-quarter of an acre more or less, and particularly described as follows: Beginning at a point in the southern boundary of lot number ten in the sixth concession of the Township of Derby, ten chains from the south-west corner of said lot, thence proceeding in a northerly direction two chains fifty links, parallel to the western boundary of said lot; thence in an easterly direction, parallel to the southern boundary, one chain; thence in a southerly direction, parallel to the western

boundary, two chains fifty links, to the southern boundary of said lot; thence along the southern boundary one chain to the place of beginning."



4. Parties.—The parties to a Deed are usually called the Grantor and Grantee. The grantor is the seller, and the grantee the purchaser. The grantor's wife, if he has one, must be a party to the Deed, for the purpose of barring her dower, except in the Province of Manitoba, where a wife has no Dower in her husband's property. It is only necessary to suggest that great care should be had in properly describing the parties;

The party of the First Part is the seller;

The party of the Second Part is the wife of the seller, if he has one;

The party of the Third Part is the purchaser.

If the seller, or grantor, is a single person, bachelor, widower, spinster, or widow, the purchaser becomes the party of the Second Part, as in all cases in the Province of Manitoba.

5. In Duplicate.—All documents respecting a sale of Real Estate, or any interest therein, should be in duplicate, so that when the contract is recorded in a Registry Office, there may be one copy left in the Registry Office and one kept by the purchaser. The two copies must be alike, *word for word*, except that the copy retained by the purchaser is legal without the affidavit of the witness. It is customary for both copies to have the witness's affidavit on them. The commissioner's charge for taking the affidavit in duplicate is the same as for one copy.

6. Executory Sale.—When a bargain is made respecting a sale of a Real Estate that cannot be immediately completed, a memorandum of it should be written out and signed and sealed by the parties. This is done,

(1) When on account of some defect in the title, or some other such contingency, the title cannot be given until some future time;

(2) Where the party purchasing is to have credit for the payment of the purchase money.

Such a document is called an Agreement for Sale of land. It need not be very formal in its character so long as it is under seal. It does not convey the title, it is simply an evidence of the *intention* of the parties to complete the transfer by Deed at some future time.

7. Form of Agreement for Sale.—The following is the ordinary form of Agreement for Sale of land. It may be proved by affidavit of witness, and registered by the purchaser.

ARTICLES OF AGREEMENT, made this Fifth day of January, in the year of our Lord one thousand nine hundred and two,

BETWEEN William James Gray, of the Township of Oro, in the County of Simcoe and Province of Ontario, carpenter, of the Fart Part;

AND Franklin Cullis, of the Township of Oro aforesaid, farmer, of the Second Part,

WITNESSETH that whereas, the said party of the First Part has agreed to sell to the party of the Second Part, and the party of the Second Part has agreed to purchase of and from the said party of the First Part, the lands, hereditaments and premises hereinafter mentioned, that is to say:

ALL AND SINGULAR that certain parcel or tract of Land, being composed of Lot Number Six in the Fourth Concession of the Township of Oro, aforesaid, containing by admeasurement One Hundred acres more or less,

Together with all the privileges and appurtenances thereto belonging at and for the price or sum of One Thousand Dollars of lawful money of Canada, payable in manner and on the days and times hereinafter mentioned, that is to say: The sum of Five Hundred Dollars to be paid at or before the sealing and delivery of this agreement; the remaining Five Hundred Dollars to be due and payable in five equal annual instalments of One Hundred Dollars each, with interest on the unpaid principal at six per cent. per annum, payable with each instalment. The first of such instalments of principal and interest to be due and payable one year from the date of this agreement.

NOW IT IS HEREBY AGREED between the parties aforesaid, in the manner following, that is to say: The said party of the Second Part, for himself, his heirs, executors and administrators, *Doth Covenant, Promise and Agree* to and with the said party of the First Part, his heirs, executors, administrators and assigns, that he or they shall and will well and truly pay or caused to be paid to the said party of the First Part, his heirs, executors, administrators and assigns, the said sum or sums of money above mentioned, together with the interest thereon, at the rate of Six per cent. per annum, on the days and times and in the manner above mentioned: AND also shall and will pay and discharge all taxes, rates and assessments wherewith the said land may be rated or charged from and after this date.

IN CONSIDERATION WHEREOF, and on payment of the said sum of money, with interest thereon as aforesaid, the said party of the First Part, *doth* for himself, his heirs, executors, administrators and assigns, *Covenant, Promise and Agree* to and with the said party of the Second Part, his heirs, executors, administrators or assigns, to convey and assure, or cause to be conveyed and assured, to the party of the Second Part, his heirs or assigns, by a good and sufficient deed in fee simple:

AND THAT the said piece or parcel of land above described, together with the appurtenances thereunto belonging or appertaining, freed and discharged from all dower or other encumbrances, but subject to the conditions and reservations expressed in the original grant thereof from the Crown; and such Deed shall be prepared at the expense of the said party of the First Part, and shall contain the usual statutory covenants for perfect title and quiet enjoyment.

AND ALSO shall and will suffer and permit the said party of the Second Part, his heirs and assigns, to occupy and enjoy the same until default be made in payment of the said sum of money, or the interest thereof, or any part thereof, on the days and times, and in the manner hereinbefore mentioned, SUBJECT, NEVERTHELESS, to impeachment for voluntary or permissive waste.

AND it is expressly understood that *time* is to be considered the essence of this agreement, and unless the payments are punctually made at the times and in the manner hereinbefore mentioned, the said party, of the First Part shall be at liberty to re-sell the said land.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals the day and year first above mentioned.

SIGNED AND SEALED
In the presence of
J. J. REITH.

W. J. GRAY, (SEAL.)
F. CULLIS. (SEAL.)

ONTARIO,
COUNTY OF SIMCOE,
TO WIT:

I, James John Reith, of the Township of Oro, in the County of Simcoe, clerk, make oath and say:

1. That I was personally present, and did see the within Instrument and Duplicate duly signed, sealed and delivered by William James Gray and Franklin Cullis, the parties thereto.

2. That the said Instrument and Duplicate were executed at the Township of Oro.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the Township of Oro, in the said County of Simcoe, this Fifth day of January, in the year of our Lord one thousand nine hundred and two.

J. J. REITH.

LEWIS LUDLOW,
A Commissioner, &c.

8. Sealing, Etc.—The Sealing of a document consists in affixing after the signature a small piece of paper, usually a round wafer of paper, or some sealing wax or some material different from the document, and acknowledging it to be your Seal. If any device is written or printed after the signature, at the time of signing, or the letters L. S. placed there, a seal may be put on afterwards.

9. Corporation Deeds, Etc., do not need the affidavit of the witness; the affixing of the Corporate Seal of the Company or the Corporation is sufficient attestation for all purposes, when the document is signed by the chief officers. When land is conveyed to a corporation, it should be made to their successors, instead of their heirs, and to successors in office where a conveyance is made to trustees.

10. Delivery.—An Agreement or Deed may be signed and sealed, but still kept in possession of the maker. It is of no effect until it has been *Delivered* to another person. The delivery is usually accompanied by such words as "I deliver this as my act and deed." It requires the delivery of such document into the hands of the parties in whose favor they are drawn to give them binding effect on the maker.

11. Affidavit of Execution.—Every document that is to be registered or recorded, should be attested to by the affidavit of the witness who saw it signed, as to the following particulars:

(1) That he saw it signed, sealed and delivered;
(2) That the act was done in a certain place;
(3) That he knows the parties to the document;
(4) That he is a witness to the document.

Such affidavit should be on the contract, or firmly attached to it. The only exception to the above is that of Corporations, mentioned above, where the Corporate Seal is sufficient attestation. The affidavit may be taken before a Registrar, Deputy Registrar, Supreme or County Court Judge, a Commissioner for taking affidavits, or a Magistrate.

12. Registration.—All documents respecting titles of Real Estate should be registered in the Registry Office of the County in which the property is situated. The contract is then a matter of *public record*. It is recognized at law, and all documents take precedence according to priority of registration.

Should a Deed, Mortgage, etc., that is registered, be lost or destroyed, a certified copy can be had any time from the Registrar, which is just as good as the original.

The Registry Offices are established for the prevention of fraud, so that any person buying Real Estate may find all the history of the title of the property, and know if it is clear. The title of any property may be examined, and Deeds, Mortgages or Agreements respecting the lot read over and copies made from them. If the Registrar makes a certified copy of any document, he charges a reasonable fee for it. The fees for registering are $1.40 for the first 700 words or under, and 15 cents per 100 for all from 700 to 1400: and 10 cents per 100 for all over 1400.

13. Order of Registrations.—Documents take effect in the order of their registration. Suppose two mortgages were made on a property, one dated January 10, 1902, and not registered till May 30, 1902; and a second mortgage made April 6, and registered April 10: the mortgage registered first, although made second, would have the first claim on the property, and would have to be satisfied before the other, drawn Jan. 10 and not registered until May 30. It is desirable that documents be registered *as soon as possible* after their execution.

14. Abstract of Title.—Every Registrar is required to keep books, known as "Abstract Books," with a special space devoted to each lot of land in the registration district. Every transaction respecting a lot must be put in the proper place. The abstract book must contain the following information:

(1) Number of instrument (Registration No.);
(2) Name of instrument—such as Patent, Deed, Mortgage, etc.;
(3) Date of instrument;
(4) Date of registry;
(5) Grantor's name;
(6) Grantee's name;
(7) Quantity of land;
(8) Consideration, price or amount of mortgage.

The Registrar, for a small fee, will furnish a copy of the Abstract Book that refers to any lot or part of lot, so that the title may be looked up hundreds of miles away from the Registry Office This is called an Abstract of Title.

15. Searching a Title.—There are three kinds of clouds on a title, that must be looked after, when searching the title to a piece of property:

(1) Has the seller a proper ownership of the land and the right to convey it? Are there any mortgages or liens against it? Search the County Registry Office, or get an Abstract from the Registrar, and look it up.

(2.) Are there any judgments against the owner? Make a search in the office of the Sheriff of the county.

(3.) Are there any taxes unpaid on the lot? Search the Town or City Treasurer's office, and Collector's Roll, if in a town or a city; or the County Treasurer's office and Collector's Roll, if the land is in a township or village.

CHAPTER 34.

REAL ESTATE

DEEDS.

- Definition.
- Varieties of Deeds.
- Warranty Deeds—Full Covenant.
- Warranty Deed—Abbreviated Covenant.
- Quit Claim Deed.
- A Deed Poll.
- A Trust Deed.
- Form (1) of Warranty Deed–Abbreviated Covenant.
- Form (2) of Warranty Deed.
- Who Should Sign.
- Deed by a Single Person.
- A Deed Subject to a Mortgage.
- Additions to Form when Subject to Mortgage,
- A Deed of Gift.
- Quit Claim Deed.
- Form of Quit Claim Deed.

1. Definition.—A Deed is a formal document, in writing, on paper or parchment, signed, sealed and delivered between the parties.

(1) The form in the previous chapter, the Agreement for Sale of land, was simply a contract to convey land after certain payments have been made. It did not convey a title. It was only a promise to convey. A Deed of land must be under seal, and should be drawn up in sets of two; or if there be a mutual contribution of land for the common use of both, such as a common lane, the land being given half by each person, the deed should be in triplicate —one for each of the parties, and one for the Registry Office.

It is the most solemn and binding act that a man can perform in the disposal of his property.

(2) If made between two or more parties, having different interests, it is called an "Indenture." If made by one person, it is called a "Deed Poll."

2. **Varieties of Deeds.**—There are very many different kinds of Deeds in common use, varying according to the circumstances of the case. The following are in common use:

(1) Warranty Deeds with full covenants;
(2) Warranty Deeds with abbreviated covenants;
(3) Quit Claim Deeds;
(4) A Deed Poll;
(5) Trust Deeds.

A Deed of land is frequently called in law a "Bargain and Sale," and in the Abstract Books in the Registry Office is denoted by B. & S.

3. **A Warranty Deed—Full Covenant,** Is one that guarantees a perfect title and quiet enjoyment of the property to the purchaser, and to his heirs and assigns after him.

The covenants are written out at great length, but on account of the length of time required for writing them out, and the extra expense of registering, the covenants have been shortened down by statute, known as the Act respecting Short Forms of Conveyances, in Ontario. In Manitoba, the word Indentures is used instead of Conveyances.

4. **Warranty Deed—Abbreviated Covenants,** is one that guarantees a perfect title and quiet possession. It is the same in effect as the Full Covenant Deed, but much shorter in words. It has been legally "boiled down" from the Full Covenant Deed. It contains all of the covenants, but in fewer words. The forms given in chapter 34 contain the abbreviated covenants.

5. **A Quit Claim Deed** is made by a person who does not hold a perfect title to a property. It is sometimes made in favor of some one who has a claim to the property. For example: Smith has mortgaged his premises to Brown. He afterwards wishes to sell to Brown, who holds the mortgage, and has already a claim. He will use a Quit Claim Deed. It is very much like an ordinary Deed, without the covenants. It conveys only the *party's interest* in the property, be the interest great or small.

6. **A Deed-Poll** is a Deed made by one person—such as a Sheriff's Deed.

7. **A Trust Deed** is one made to a person called a trustee, for the benefit of some other person. It does not give the person who is trustee any personal claim, nor his wife any dower in the property.

8. **Form (1)**—The following is the ordinary short form of Statutory Deed, with abbreviated covenants.

THIS INDENTURE made (in duplicate) the first day of December, in the year of our Lord One Thousand Nine Hundred and Two. IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES;

BETWEEN John James Reith, of the Township of Luther, County of Dufferin, and Province of Ontario, Merchant, of the First Part; and

Maria Jane Reith, wife of the party of the First Part, of the Second Part; and

William James Gray, of the Township of Oro, County of Simcoe, Province of Ontario, merchant, of the Third Part:

WITNESSETH that in consideration of the sum of Five Hundred Dollars ($500) of lawful money of Canada, now paid by the said party of the Third Part to the said party of the First Part, (the receipt whereof is hereby acknowledged,) he, the said party of the First Part, DOTH GRANT unto the said party of the Third Part, in fee simple,

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Barrie, in the County of Simcoe, and Province of Ontario, containing by admeasurement one quarter (¼) of an acre, be the same more or less, being composed of Lot No. four (4) on West side of Scrope Street, in the Town of Barrie aforesaid,

TO HAVE AND TO HOLD unto the said party of the Third Part, his heirs and assigns, to and for his and their sole and only use FOREVER, SUBJECT NEVERTHELESS, to the reservations, limitations, provisos and conditions expressed in the original GRANT thereof from the Crown.

(NOTE. *The five following items are the covenants that make a warranty Deed of this.*)

THE said party of the First Part COVENANTS with the said party of the Third Part, THAT he has the right to convey the said lands to the said party of the Third Part, notwithstanding any act of the said party of the First Part.

AND that the said party of the Third Part shall have quiet possession of the said lands, free from all incumbrances.

AND the said party of the First Part COVENANTS with the said party of the Third Part, that he will execute such further assurances of the said lands as may be requisite.

AND the said party of the First Part, COVENANTS with the said party of the Third Part that he has done no act to incumber the said lands.

And Maria Jane Reith, the party of the Second Part, hereby bars her Dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of JOHN S. HOWES. — JOHN REITH. L. S.

MARIA JANE REITH. L. S.

COUNTY OF SIMCOE: TO WIT: I, John Samuel Howes of the Township of Minto, in the County of Wellington, and Province of Ontario, Manufacturer, make oath and say:

1. THAT I was personally present and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by John James Reith and Maria Jane Reith, two of the parties thereto,

2. THAT the said Instrument and Duplicate were executed at the Town of Barrie.

3. THAT I know the said parties.

4. THAT I am a subscribing Witness to the said Instrument and Duplicate.

SWORN before me at the Town of Barrie, in the County of Simcoe, this first day of December, A.D. 1902. } JOHN S. HOWES.

JOHN JAMES GIBSON,

A Commissioner for taking affidavits in H. C. J.

Form (2)—The following is a still shorter form of Deed, made possible in Ontario by the Devolution of Estates Act of 1886." It will be noticed that the five covenants in the foregoing Deed when "boiled down," are equivalent to the two covenants in this.

THIS INDENTURE made (in duplicate) the first day of December, in the year of our Lord, One Thousand Nine Hundred and two. IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES, AND OF THE CONVEYANCING AND LAW OF PROPERTY ACT, 1896;

BETWEEN John James Reith of the Township of Luther, County of Dufferin, Province of Ontario, merchant, of the First Part; and
Maria Jane Reith, wife of the party of the First Part, of the Second Part; and William James Gray of the Township of Oro, County of Simcoe, Province of Ontario, merchant, of the Third Part;

WITNESSETH that in consideration of the sum of Five Hundred Dollars ($500) of lawful money of Canada, now paid by the said party of the Third Part to the said party of the First Part, (the receipt whereof is hereby by him acknowledged,) he, the said party of the First Part, who conveys as beneficial owner, DOTH GRANT unto the said party of the Third Part, in fee simple,

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Barrie in the County of Simcoe, and Province of Ontario, containing by admeasurement one-quarter (¼) of an acre, be the same more or less, being composed of Lot Number Four (4) on the West side of Scrope Street, in the Town of Barrie aforesaid.

AND the said party of the First Part COVENANTS with the said party of the Third Part, that he has done no act to encumber the said lands.

AND the said party of the First Part RELEASES to the said party of the Third Part all his claims in the said lands

And Maria Jane Reith, the said party of the Second Part, hereby bars her Dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED in the presence of JOHN J. GIBSON. } JOHN J. REITH. L. S.
MARIA JANE REITH. L. S.

COUNTY OF DUFFERIN: TO WIT: I, John James Gibson, of the Township of Luther, County of Dufferin, Province of Ontario, miller, make oath and say:

1. THAT I was personally present and did see the within Instrument and a Duplicate thereof duly signed, sealed and executed by John James Reith and Maria Jane Reith, two of the parties thereto.

2. THAT the said Instrument and Duplicate were executed at the Township of Luther.

3. THAT I know the said parties.

4. THAT I am a subscribing witness to the said Instrument and Duplicate

Sworn before me at the Township of Luther, in the County of Dufferin, this first day of December, A.D. 1902. JOHN J. GIBSON

F. C. MCDOWALL.

A Commissioner for taking Affidavits in H. C. J.

10. Who Should Sign.—The answer is, Every party who has anything yet to do. In the ordinary cases, the party of the Third Part does not sign. He has paid his money and he has nothing further to do. If, however, there is any covenant that binds him in the future, to pay off a mortgage or claim, or to allow a part of the property to be used as a lane; or if there is any restrictive claim in the Deed, he must sign, to bind himself.

11. Deed by a Single Person.—In a Deed by an unmarried person, such as a spinster, bachelor, widow or widower, it is proper to mention the fact in section three, of the affidavit to the execution, which should read as follows: "I know the said party, that he is an unmarried man, being a bachelor" This often saves the trouble and expense of proving this, years afterwards, when a title is being looked up.

12. A Deed Subject to a Mortgage.—Property is often sold subject to an existing mortgage, the purchaser agreeing to pay off the mortgage as part of the purchase money. To accomplish this, the following clause, or some words of similar effect should be written in, either after the description of the land, or after the clause that ends up with the words, "subject to the reservations, limitations, provisos and conditions expressed in the original grant from the Crown."

13. Additions to Ordinary Form—

(1) Form of clause for Deed, subject to mortgage. "Subject, however, to a certain mortgage, made by the parties of the First and Second Parts to Henry Swinton, dated January 20, 1902, securing the payment of the sum of five hundred dollars, with interest at 7 per cent. per annum, which mortgage the

party of the Third Part agrees to pay, satisfy and discharge, as part of the purchase money, and save harmless therefrom the party of the First Part.

(1) Add to three of the clauses requiring it, the modifying words, "except as aforesaid," so as to make them harmonize with the encumbrance of the mortgage provided for in the foregoing clause.

14. A Deed of Gift.—A Deed of Gift of property from father to son, etc., is usually drawn as follows, in the parts that relate to the consideration, "Witnesseth that in consideration of natural love and affection, and the sum of One Dollar," thus including both a *good* and a *valuable* consideration.

15. The Quit Claim Deed as mentioned in a previous section, is one that does not give any guarantee of title. The words conveying the title are different, as the seller is only parting with *his interest in the property.*

It is given (1) When a person's title is defective, and he only wants to convey such title as he really possesses;

(2) Where a mortgagee purchases the land mortgaged to him, he having the covenants of guarantee already in his mortgage in his favor.

(3) When heirs in common of an estate, quit their claim to one another.

16. Form of Quit Claim Deed—

THIS INDENTURE, made in duplicate the first day of December, in the year of our Lord one thousand nine hundred and two:

BETWEEN John James Reith, of the Township of Luther, County of Dufferin, and Province of Ontario, yeoman, of the First Part; and
Maria Jane Reith, wife of the party of the First Part, of the Second Part; and William James Gray, of the Township of Oro, County of Simcoe, and Province of Ontario, merchant, of the Third Part,

WITNESSETH that the said party of the First Part, for and in consideration of the sum of Five Hundred Dollars ($500) of lawful money of Canada, to him in hand paid by the said party of the Third Part, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HAS granted, released and quitted claim, and by these presents, DOTH GRANT, RELEASE AND QUIT CLAIM unto the said party of the Third Part, his heirs and assigns, ALL estate, right, title, interest, claim and demand whatsoever, both at law and in equity, or otherwise howsoever, and whether in possession or expectancy, of him, the said party of the First Part, of, in, to, or out of

ALL AND SINGULAR, that certain parcel or tract of land and premises, situate, lying and being in the Town of Barrie, in the County of Simcoe, and Province of Ontario, containing by admeasurement one-quarter (¼) of an acre

be the same more or less, being composed of Lot Number Four (4) on the West side of Scrope Street, in the Town of Barrie aforesaid, TOGETHER with the appurtenances thereto belonging or appertaining,

TO HAVE AND TO HOLD the aforesaid land and premises, with all and singular the appurtenances thereto belonging or appertaining, unto and to the use of the said party of the Third Part, his heirs and assigns for ever;

SUBJECT NEVERTHELESS to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

And Maria Jane Reith, the said party of the Second Part, hereby bars her Dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED in the presence of JOHN S. HOWES. — JOHN J. REITH. (L. S.) MARIA JANE REITH, (L. S.)

Affidavit of Witness to the execution.

COUNTY OF SIMCOE: TO WIT: I, John Samuel Howes, of the Town of Harriston, in the County of Wellington, and Province of Ontario, Manufacturer, make oath and say:

1. That I was personally present, and did see the within Instrument and the Duplicate thereof, duly signed, sealed and executed by John James Reith and Maria Jane Reith, two of the parties thereto;

2. That the said Instrument and Duplicate were executed at the Town of Barrie;

3. That I personally know the said parties;

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at Barrie, in the County of Simcoe, this first day of December, A.D. 1902. — JOHN S. HOWES

F. C. McDOWALL.

A Commissioner for taking Affidavits in H. C. J.

CHAPTER 35.

REAL ESTATE.

MORTGAGES, ETC.

- Definition.
- Form of Mortgages.
- The Re-Payment Clause.
- Sinking Fund Mortgages.
- Additional Clauses,
  - Special Insurance Clause.
  - Tenant-at-will Clause.
  - Provision for Foreclosure.
  - Provision for Payment of Taxes etc.
  - Provisions for Compounding Unpaid Interest.
  - Powers of Sale.
- Registration of Mortgages.
- Making Sure of the Title.

1. Definition.—A Mortgage is a grant or conveyance of Real Estate by a borrower or a debtor to a lender or creditor, to secure the re-payment of a loan or debt. The property is pledged, in fact really conveyed, such conveyance contains a condition that the mortgagor may buy it back again by repaying certain sums at certain times. The person giving the Mortgage is called the Mortgagor. The person in whose favor it is made is called the Mortgagee. It will be noticed that in form, a Mortgage is very like a Deed with a "proviso" for repayment added.

2. Form of Mortgage—

THIS INDENTURE, made in duplicate, the First day of February, one thousand nine hundred and two, In Pursuance of an ~~Act Respecting~~ Short Forms of Mortgages,

Between Henry Richard Manders, of the Township of Smith, in the County of Peterboro', and Province of Ontario, Farmer, of the First Part, hereinafter called the Mortgagor;
Mary Ann Manders, wife of the party of the First Part, of the Second Part; And William James Clark, of the Township of Smith aforesaid, Gentleman, of the Third Part, hereinafter called the Mortgagee,

Witnesseth that in consideration of Six Hundred ($600.00) Dollars of lawful money of Canada, now paid by the said Mortgagee to the said Mortgagor, (the receipt whereof is hereby acknowledged). The said mortgagor Doth Grant and Mortgage unto the said Mortgagee, his heirs and assigns FOREVER, All and Singular, that certain parcel or tract of land and premises situate, lying and being in the Township of Smith aforesaid, containing by admeasurement, Two Hundred Acres more or less, being composed of lot Number Eight (8) in the tenth (10) Concession of the Township of Smith aforesaid; and Mary Ann Manders, the party of the Second Part, hereby bars her Dower in said lands:

PROVIDED, this Mortgage to be void on payment of Six Hundred Dollars of lawful money of Canada, with interest at Seven per cent. per annum, as follows: The said principal sum of Six Hundred Dollars to be due and payable five years from the date hereof, with interest thereon at Seven per cent. per annum, payable yearly. The first of such payments of interest to be due and payable on the first day of February, 1903, and taxes and performance of Statute Labor.

THE said Mortgagor COVENANTS with the said Mortgagee, THAT the Mortgagor will pay the Mortgage Money and Interest, and observe the above proviso.

THAT the Mortgagor has a good title in fee simple to the said lands.

AND THAT he has the right to convey the said lands to the said Mortgagee.

AND THAT on default or non-observance of any of the provisions or stipulations herein contained, the Mortgagee shall have quiet possession of the said lands free from all encumbrances.

AND THAT the said Mortgagor will execute such further assurances of the said lands as may be requisite.

AND THAT the said Mortgagor has done no act to encumber the said lands.

AND THAT the said Mortgagor will insure the buildings on the said lands to the amount of not less than Five Hundred Dollars currency: Provided that the Mortgagee may insure the same without reference to the Mortgagor, and charge any moneys, with interest at the rate aforesaid, paid by him in respect thereof, on the said lands.

AND the said Mortgagor doth RELEASE to the said Mortgagee all his claims upon the said lands, subject to the said proviso.

Provided that the said Mortgagee may distrain for arrears of Interest.

PROVIDED that in default of payment of the Interest, or of any portion of the moneys hereby secured, the principal hereby secured shall become due and payable.

PROVIDED THAT until default of payment the Mortgagor shall have quiet possession of the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED In the presence of R. B. COCHRANE. — HENRY R. MANDERS. [SEAL] MARY ANN MANDERS. [SEAL]

RECEIVED on the day of the date of this Indenture the sum of Five Hundred (500.00) Dollars, mentioned as consideration.

WITNESS: R. B. COCHRANE. — HENRY R. MANDERS.

COUNTY OF PETERBORO, TO WIT: I, Richard Bernard Cochrane, of the Township of Smith, in the County of Peterboro', Gentleman, make oath and say:

1. That I was personally present and did see the within Instrument and the Duplicate thereof duly signed, sealed and executed by Henry Richard Manders and Mary Ann Manders, two of the parties thereto.

2. That the said Instrument and Duplicate were executed at the Township of Smith.

3. That I know the said parties.

4. That I am a subscribing Witness to the said Instrument and Duplicate.

SWORN before me at the Township of Smith, in the County of Peterboro' this first day of February, A.D. 1902. W. T. GRAY, } R. B. COCHRANE.

A Commissioner for taking affidavits in H. C. J.

3. The Re-payment Clause of a mortgage is that clause that provides when and how the loan or debt is to be repaid. The rights of the Mortgagor in a repayment clause is called an "equity of redemption." The clause in the foregoing form makes the principal payable at the end of a term of years and the interest payable annually. Great care should be taken in the composition of these clauses so that they may be made so explicit, that there cannot be a doubt or quibble as to the time and manner of re-payment. Many persons desire to have the principal of their mortgages payable in annual instalments and the interest on all the principal paid up to date. The following is the form :—

"Provided this Mortgage to be void on payment of Six Hundred Dollars of lawful money of Canada, with interest thereon at the rate of Six per cent. as follows:—That is to say, the said principal sum of Six Hundred Dollars to be due and payable in six equal annual instalments of One Hundred Dollars each, with interest at the rate of Six per cent. per annum on the unpaid principal payable annually with each instalment of principal. The first of such payments of principal and interest to be due and payable on the first day of February, A.D. 1903, and taxes and performance of statute labor."

In case the instalments are irregular, either as to amount or dates of payment, it is better to give the amount of each instalment and its exact due date. Very little trouble will be experienced in varying the foregoing to suit half-yearly interest.

4. Sinking Fund Mortgages.—A Sinking Fund Mortgage is one in which the principal and interest together, are divided into a number of equal yearly, half-yearly, or monthly payments. This form of re-payment clause was used very extensively in Canada until recent legislation almost abolished them by making them illegal, unless they gave the following particulars in the repayment clause :

(1) The amount of the loan ;
(2) The rate of interest ;
(3) The part of each annual payment that is for interest ;
(4) The part of each annual payment that is for principal.

Formerly these Mortgages were used to cover up exorbitant rates of interest, charged by grasping or unscrupulous loan companies and private lenders. Everything has now to be plain and above-board. That borrower who *thought* he was paying six per cent. and who was really paying somewhere between twelve and twenty per cent., can no longer be deceived or left in the dark as to the obligation he incurs when he gives a lien on his property. Building Societies are about the only institutions that now use the old sinking fund form of Mortgage.

5. **Additional Clauses.**—Joint Stock Loan Companies and some private individuals put various extra clauses in for better securing themselves, as frequently people that call themselves "good citizens" will deliberately set themselves to cheat a loan company when they would not think of acting so with a private person.

6. **Special Insurance Clauses.**—"And that the said mortgagor will insure the buildings on the said lands to the amount of not less than One Thousand Dollars, currency: Provided that the company may insure the same without reference to the mortgagor, and charge any money with interest at the rate aforesaid paid by them in respect thereof on the said lands: and to enable the company to effect insurance in any Joint Stock or Mutual Fire Insurance Company, the mortgagor hereby appoints the President and Manager his joint agents, to sign on his behalf, all necessary insurance applications, premium notes or undertakings for payment of the insurance premium moneys; and provided also that in the event of any loss by fire happening, either before or after default shall have been made in payment of the moneys in the above provisos, or herein elsewhere mentioned, or in doing or keeping of any of the covenants or agreements herein contained, on the part of the mortgagor, the company may apply the moneys to be derived from said insurance, either towards reconstructing the destroyed buildings, or toward payment of the said money hereby secured, as they may deem best."

7. **Tenant-at-will Clause.**—"And the said mortgagor doth RELEASE to the said company all his claims upon the said lands, and doth attorn-to and become Tenant-at-Will to the said company, subject to the said proviso, at a rent equal to the interest hereinbefore mentioned."

8. **Provision for Foreclosure.**—"Provided that such notice may be effectually given, either by leaving the same on the door of the dwelling house or other conspicuous part of the premises, if unoccupied, or at the option of the company or their assigns, by publishing the same for four

consecutive times in some newspaper published in the County in which the lands are situated; and provided that the said lands may be sold, either by public auction or by private sale, and either for cash or credit; and that the company or their assigns may vary or rescind any contract or sale by virtue of said power, and may buy in and re-sell the said lands, or any part thereof, either by private sale or public auction, without being responsible for any loss or deficiency for, or on account of such estate ; and that no purchaser under such power of sale, shall be bound to inquire into the legality or regularity of any sale under the said power, or to see to the application of the purchase money."

9. Provision for Payment of Taxes, &c.—"And is hereby agreed between the parties hereto, that the company may pay all taxes and rates which shall from time to time fall due and be unpaid in respect of the mortgaged premises; and charge such payment, with interest at the rate aforesaid, on the mortgaged premises, and that in case the company satisfy any charge on the said lands, the amount paid in respect thereof shall be payable forthwith with interest at the rate aforesaid; and in default, the power of sale hereby given may be exercised. And that neither the execution nor registration of this mortgage shall bind the company to advance the money."

10. Provision for Compounding Unpaid Interest.—"And that all interest in arrear upon this Mortgage shall bear interest at the rate of Eight per cent. per annum, from the time of its accruing due and becoming payable, and that the principal money secured shall bear interest at the said rate until said principal moneys and interest are paid.

11. Power of Sale.—Every Mortgage contains a clause to the following effect: Provided that the mortgagee on default of payment for three months, may on one month's notice, enter on and lease or sell the said lands," &c. This clause enables the mortgagee, after strictly complying with the terms of the notice, to sell the mortgaged lands.

12. Registration of Mortgages.—The registration of a mortgage is very essential. If two mortgages are given, the one registered first will be satisfied first, in case the property has to be sold. Suppose Smith makes a mortgage to Jones, January 15th. It is registered July 10th. Another to Moore on May 20th, which is registered May 22nd. A judgment is given against him July 1st, and taxes become due, say, Oct. 1st.

(1) Taxes are a first claim, and come ahead of everything else.

(2) The second mortgage comes next for a share, because registered earliest.

(3) The judgment comes, if anything remains.

(4) If there is anything left, the first mortgage takes it. It might have been first after the taxes, if only registered promptly.

13. Making Sure of the Title.—Before advancing money on a mortgage, the loan companies are very careful to search the title, as indicated in a previous section. They get an abstract of the title first of all, then draw the mortgage, have it signed and registered, and the abstract or the title *continued* so as to show the mortgage on it. They, by this means, see that there are no others ahead of theirs. After all this they search the Sheriff's office for judgments, and the Treasurer's for back taxes. If there are any claims in either office, they pay them and deduct their expenses, and hand the balance to the mortgagee. This is about the only safe way for all cases, and private individuals would do well to take like precautions.

CHAPTER 36.

REAL ESTATE MORTGAGES.

Assignment and Discharge.

- Foreclosure.
- Transfer of a Mortgage.
- Form of Assignment.
- Discharge of Mortgage.
- Form of Discharge of Mortgage.
- Unsatisfied Mortgages.
- Repayment of Mortgages.

1. Foreclosure.—If a mortgagor fails to pay his mortgage and interest, the process of enforcing the claim by appropriating or selling the land, is popularly called Foreclosure. The mortgagor is deprived of his ownership. Though the mortgagee may legally appropriate the land under his mortgage, in practice this is not done. A sale is always held, so as to make the title surer and establish a value, so that anything left over after satisfying the mortgage and expenses, may be returned to the mortgagor.

2. Transfer of a Mortgage.—A mortgage is not negotiable paper, and is not transferable by indorsement. It is a sealed and registered contract, and requires a sealed and registered contract to change the ownership. This doc-

ument is called an Assignment of Mortgage. It should be drawn in duplicate, and registered where the Mortgage is registered.

3. Form of Assignment—

THIS INDENTURE, made in duplicate, the First day of August in the year of our Lord one thousand nine hundred and two,

BETWEEN William James Clark, of the Town of Peterboro', in the County of Peterboro', and Province of Ontario, student, of the First Part, hereinafter called the Assignor; and James John Reith, of the Township of Luther, in the County of Wellington and Province of Ontario, Merchant, of the Second Part, hereinafter called the Assignee.

WHEREAS by a Mortgage dated on the First day of February, in the year of our Lord one thousand nine hundred and two, Henry Richard Manders, of the Township of Smith, County of Peterboro' and Province of Ontario, farmer, and wife, did grant and Mortgage the land and premises therein and hereinafter described to William James Clark aforesaid, his heirs and assigns, for securing the payment of Six Hundred Dollars of lawful money of Canada, and there is now owing upon the said Mortgage the sum of Six Hundred and Twenty-one Dollars:

NOW THIS INDENTURE WITNESSETH, that in consideration of Six Hundred and Ten Dollars of lawful money of Canada, now paid by the said Assignee to the said Assignor [the receipt whereof is hereby acknowledged], the said Assignor DOTH HEREBY ASSIGN and set over unto the said Assignee, his executors, administrators and assigns, ALL that the said before in-part-recited Mortgage, and also the said sum of Six Hundred and Twenty-one Dollars now owing as aforesaid, together with all moneys that may hereafter become due or owing in respect of said Mortgage, and the full benefit of all powers and of all covenants and provisos contained in said Mortgage. And also full power and authority to use the name or names of the Assignor, his heirs, executors, administrators, or assigns, for enforcing the performance of the covenants and other matters contained in the said mortgage. AND the said Assignor DOTH HEREBY GRANT and CONVEY unto the said Assignee, his heirs and assigns, ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the Township of Smith, in the County of Peterboro', and Province of Ontario, containing by admeasurement Two Hundred Acres, be the same more or less, being composed of Lot Number Eight [8] in the Tenth Concession of the Township of Smith aforesaid;

TO HAVE AND TO HOLD the said Mortgage, and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged, to the use of the said Assignee, his heirs, executors, administrators and assigns, absolutely and forever; but subject to the terms contained in such Mortgage.

AND THE SAID ASSIGNOR for himself, his heirs, executors, administrators and assigns doth hereby covenant with the said Assignee, his heirs, executors, administrators and assigns, THAT the said Mortgage hereby assigned is a good and valid Security, and that the said sum of Six Hundred and Twenty-one Dollars is now owing and unpaid, AND THAT he hath not done or permitted

any act, matter or thing whereby the said Mortgage has been released or discharged, either partly or in entirety: AND that he will upon request do, perform and execute every act necessary to enforce the full performance of the covenants and other matters contained therein.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED In the presence of WM. NOTTER. } WILLIAM J. CLARK. [L.S.]

COUNTY OF PETERBORO', TO WIT: } I, William Notter, of the Town of Peterboro', in the County of Peterboro', and Province of Ontario, Gentleman, make oath and say:

1. That I was personally present, and did see the within Instrument and the Duplicate thereof, duly signed, sealed and executed by William James Clark, one of the parties thereto.

2. That the said Instrument and Duplicate were executed at the Town of Peterboro'.

3. That I know the said party to be of the full age of twenty-one years.

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at Peterboro', in the County of Peterboro', this first day of August, in the year of our Lord, 1902. JOHN CREASOR. } WM. NOTTER

A Commissioner for taking affidavits in H. C. J.

4. A Discharge of Mortgage is a legal and statutory form of receipt, showing that a mortgage has been paid. It requires a registered instrument to cancel a registered mortgage. It must be signed in presence of a witness by

1. The Mortgagee or his representative; or,
2. The Assignee of the mortgage, in case it has been sold.

The Mortgagee must not refuse to sign a discharge after a mortgage has been paid. If the mortgage has been assigned, the assignment should be as accurately described in the discharge as the mortgage itself. All the particulars as to date, registration, etc., should be taken from the registrar's certificate on the assignment.

A discharge operates as a re-conveyance of the lands to the Mortgagor or his representatives.

5. Form of Discharge of Mortgage—

PROVINCE OF ONTARIO, COUNTY OF PETERBORO', TO WIT. } DOMINION OF CANADA.

To the Registrar of the North Riding of the County of Peterboro',

I, William James Clark, of the Township of Smith, in the County of Peterboro', and Province of Ontario, DO CERTIFY that Henry Richard Manders, of the Township of Smith aforesaid, hath satisfied all money due on or to grow due on a certain Mortgage made by Henry Richard Manders and wife, of the Township of Smith aforesaid, to William James Clark aforesaid, which Mortgage bears date the First day of February, A.D. 1902, and was registered in the Registry Office for the North Riding of Peterboro', on the third day of February, A.D. 1902, at twenty minutes past One o'clock in the afternoon, in Liber 37 for the Township of Smith, as No. 5755.

THAT such Mortgage has not been assigned.

That I am the person entitled by law to receive the money and that such Mortgage is therefore diicharged.

WITNESS my hand this first day of February, A.D. 1902.

SIGNED, SEALED AND DELIVERED in the presence of WM. NOTTER. } W. J. CLARK. (L.S.)

ONTARIO, COUNTY OF PETERBORO', TO WIT. } I, William Notter, of the Town of Peterboro', in the County of Peterboro', Province of Ontario, Student, make oath and say:

1. That I was personally present and did see the within Certificate of Discharge of Mortgage duly signed and executed by William James Clark, one of the parties thereto.
2. That the said Instrument was executed at the Town of Peterboro'.
3. That I know the said party.
4. That I am a subscribing witness to the said instrument.

SWORN before me at Peterboro', in the County of Peterboro', this First day of February, A.D. 1902. JOHN CREASOR, } WM. NOTTER.

A Commissioner for taking Affidavits in H. C. J.

6. Unsatisfied Mortgages—Suppose Smith mortgages his farm to Jones as security for the payment of One Thousand Dollars. If the mortgage is foreclosed and sold, and only brings say, $800 over the expenses, the mortgage is still good as an evidence of a debt for 20 years, or 10 years in Manitoba, being under seal. If the Mortgagor is ever worth the $200 lacking in the Mortgage, the Mortgagee may sue him and recover the amount with interest and costs.

Repayment of Mortgages.—In Mortgages made since July 1st, 1888, in Ontario, where default has been made in paying any principal according to the terms of the Mortgage, said principal may be paid at any time thereafter without notice, or payment of interest in lieu of notice, unless there be an express agreement in the Mortgage to the contrary.

CHAPTER 37.

REAL ESTATE.

The Torrens System.

- The Torrens System.
- Used in Manitoba.
- How to get a Torrens Title.
- An Absolute Title.
- Necessary Affidavits.
- Form of Certificate of Title.
- Form of Transfer of Title.
- Form of Mortgage.

1. **The Torrens System** of conveying Real Estate, and of recording land titles, has been introduced into various Provinces in Canada. In Ontario, it was made applicable to the City of Toronto, and to the new District of Algoma, etc., lying to the north and west. Other parts of the Province can bring it into operation by complying with the provisions of the Act.

Although the titles to property are perfected when brought under this system, and transfers are easily made, it has been very little used in the Province of Ontario.

2. **Used in Manitoba.**—Since the introduction into Manitoba of the Torrens System, a great portion of the lands, especially those in Cities, Towns and Villages, have been brought under its operation. The operation of the system is the same in all places, hence a description of its operation in Manitoba, and the forms used in connection with it there, will be applicable to all Provinces, and sufficient for the purposes of this volume.

3. **How to get a Torrens Title.**—The owner of lands under the old system, desiring to bring his title under the operation of the Real Property Act, as it is entitled under the Statute, makes an application in writing, in the form prescribed by the Act, showing himself to be owner, what encumbrances thereon, what adjoining owners, etc., and this is duly verified by his affidavit. Examiners appointed for the purpose by the Lieutenant-Governor in Council, make a thorough examination of the title, and upon their being satisfied, a Certificate of Title is issued by the District Registrar to the owner.

4. An Absolute Title.—The effect of a Torrens Title by the Statute, is, that the production of a registered Certificate of Title shall be held in every Court of Law or Equity, to be an absolute bar and estoppel of any action against the person named therein, as seized of, or as registered owner or lessee of the land described therein, any rule of Law or Equity to the contrary; with, however, only a few exceptions, which are specifically mentioned in the Statute. The forms used under this Act are simple and brief, and save a great deal of expense involved in repeated examinations of Titles under the old system. Instead of the word "Deed" being used under this system, it is termed a "Transfer."

5. Necessary Affidavits.—Under the Real Property Act, it is necessary that the Witness to the execution of the Mortgage or Transfer should make an affidavit, verifying the execution, and also that the Mortgagor or Transferror make an affidavit, to the effect that he is twenty-one years of age, and the owner of the land being transferred or mortgaged.

6. Form of Certificate of Title.—Wilbert McIntyre of the City of Winnipeg, in the Province of Manitoba, Medical Doctor, is now seized of an estate in fee simple, subject to such encumbrances, liens and interests as are notified by memorandum underwritten, in that piece or parcel of land known or described as follows:—

That is to say the North Half of Section Number Seven, in Township Number Thirteen, Range Number Seven, east of the principal meridian, in the Province of Manitoba, containing by admeasurement Three Hundred and Twenty Acres more or less.

In witness whereof I have hereunto signed my name and affixed my seal this twenty-fifth day of August, A.D. 1902.

Signed in the presence of H. E. BERRIDGE. } M. R. BELL. [SEAL.]

District Registrar for the Land Titles District of

7. Form of Transfer of Title.—From registered owner to purchaser, with accompanying affidavits:

I, Wilbert McIntyre, of the City of Winnipeg, in the Province of Manitoba, Medical Doctor, being registered owner of an estate in fee simple, subject however to such encumbrances, liens and interests as are notified by memorandum underwritten, in all that land containing by admeasurement Three Hundred and Twenty acres, more or less, and more particularly described as the North half of section Number Seven, in Township Number Thirteen, Range Number Seven, east of the principal meridian, in the Province of Manitoba,

do hereby, in consideration of the sum of Nine Hundred Dollars paid to me by George William Donald, of the city of Winnipeg, Accountant, the receipt of which sum I hereby acknowledge, transfer to the said George William Donald, my estate and interest in the said piece of land.

In witness whereof I have hereunto subscribed my name, this twenty-fifth day of August, A.D. 1902.

SIGNED on the day above named by the said Wilbert McIntyre in the presence of ALLAN RUTHERFORD. — WILBERT MCINTYRE.

MANITOBA. TO WIT: I, Wilbert McIntyre of the city of Winnipeg in the Province of Manitoba, Medical Doctor, make oath and say:—

1. That I am the within-named Transferror, and that I am of the full age of twenty-one years.

2. That I am the registered owner of the lands mentioned in the within Transfer.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this twenty-fifth day of August, A.D. 1902. CLIFFORD SIFTON, *A Commissioner in B. R. etc.* — WILBERT MCINTYRE.

MANITOBA TO WIT. I, Allan Rutherford, of the city of Winnipeg, in the Province of Manitoba, Teacher, make oath and say:—

(1) That I was present and did see Wilbert McIntyre, the within-named transferror, execute the within transfer.

(2) That I know the said Wilbert McIntyre; and that he is of the age of twenty-one years.

(3) That the said transfer was executed at the City of Winnipeg, and that I am a subscribing witness thereto.

Sworn before me at City of Winnipeg in the Province of Manitoba, this twenty-fifth day of August, A.D. 1902. CLIFFORD SIFTON. *A Commissioner in B. R. etc.* — ALLAN RUTHERFORD.

8. Form of Mortgage.—

I, Wilbert McIntyre, of the City of Winnipeg, in the Province of Manitoba, Medical Doctor, being the registered owner of an estate in fee simple, subject however, to such encumbrances, liens and interests as are notified by memorandum underwritten, in that piece of land containing by admeasure-

ment Three Hundred and Twenty Acres more or less, and more particularly described as the North-half of Section number Seven, in Township Number Thirteen, Range Number Seven, east of the principal meridian, in the Province of Manitoba, in consideration of the sum of Six Hundred Dollars, lent to me by George William Donald of the City of Winnipeg, Accountant, the receipt of which sum I do hereby acknowledge and covenant with the said George William Donald:

First, That I will pay to him the said George William Donald the above sum of Six Hundred Dollars, on the twenty-fifth day of August, A.D. Nineteen Hundred and Five.

Secondly, That I will pay interest on the said sum at the rate of Six per cent. on the dollar per year by equal payments, on the twenty-fifth day of August in every year.

Thirdly, That I will pay taxes, and perform statute labor, and insure the buildings on said land in favor of the said George William Donald at their full insurable value.

And for the better securing to the said George William Donald the repayment in the manner aforesaid of the Principal sum and Interest, I hereby mortgage to the said George William Donald, my estate and interest in the land above described.

In witness whereof I have hereunto signed my name this twenty-fifth day of August, A.D. 1902.

SIGNED by the above-named Wilbert McIntyre, as mortgagor, this twenty-fifth day of August, A.D. 1902, in the presence of
ALLAN RUTHERFORD.

WILBERT MCINTYRE. (L.S.)

MANITOBA. } I, Wilbert McIntyre of the City of Winnipeg, in the Province
TO WIT; } of Manitoba, Medical Doctor, make oath and say:—

1. That I am the within-named Mortgagor, and that I am of the full age of twenty-one years.

2. That I am the registered owner of the lands mentioned in the within Mortgage.

SWORN before me at the City of Winnipeg, in the Province of Manitoba, this twenty-fifth day of August, A.D. 1902.
CLIFFORD SIFTON,

A Commissioner in B. R. etc.

WILBERT MCINTYRE.

MANITOBA } I, Allan Rutherford, of the City of Winnipeg, in the Province
TO WIT: } of Manitoba, Teacher, make oath and say:

(1) That I was present and did see Wilbert McIntyre, the within-named Mortgagor, execute the within Mortgage.

(2) That I know the said Wilbert McIntyre; that he is of the age of twenty-one years.

(3) That the said Mortgage was executed at the City of Winnipeg; and that I am a subscribing witness thereto.

Sworn before me at the City of Winnipeg, in the Province of Manitoba, this twenty-fifth day of August, A.D. 1902.

ALLAN RUTHERFORD.

CLIFFORD SIFTON.

A Commissioner in B. R. etc.

CHAPTER 38.

AGENCY.

- DEFINITION.
- THE PRINCIPAL.
- THE AGENT.
- THIRD PARTIES.
- APPOINTMENT ORALLY.
- APPOINTMENT BY LETTER.
- APPOINTMENT BY POWER OF ATTORNEY.
- FORM OF POWER OF ATTORNEY.
- PROVING AUTHORITY.
- WHO MAY BE PRINCIPAL.
- WHO MAY ACT AS AGENT.
- EXTENT OF AUTHORITY.
- TERMINATION OF AGENCY.
- SUB-AGENTS.
- GENERAL AGENTS.
- SPECIAL AGENTS.

1. **Definition.**—Agency is that condition of affairs where one person attends to business for another person. It is difficult to get a full view of this comprehensive department of Commercial Law. If you send a boy to purchase a postage stamp for you, he is your special agent to attend to that business. You have a man employed in your workshop to do work for you; he is your agent for that work. You engage a clerk to sell and buy, to pay and receive payments, etc., for you in your grocery store: he is your agent. You appoint a person to sign notes, drafts, cheques, deeds or mortgages for you: he is your agent. How very small would be the business houses, and how meagre the commerce, without agency. How would our great lines of railway, or our steamboats, be worked without it? Every engineer, brakeman, fireman, conductor, etc., is an agent in his own department for the railway, or steamboat company.

2. The Principal is the name given to the person that gets another to do business for him. He may be any person capable of making ordinary contracts, and he can employ another, to do for him anything that he may do himself.

3. The Agent is the person who does business for another. He may be any person who has sufficient understanding to do as he is directed by his principal. Although a minor cannot usually bind himself in a contract, he can, as agent, bind his principal; so may a married woman, in cases where she could not do business on her own account. Examples of agents are: commission merchants, brokers, auctioneers, lawyers, etc.

4. Third Parties are those persons with whom the agent does business on account of the principal. They and the principal are the persons concerned in the business transacted.

5. Appointment Orally.—For ordinary business, agents are frequently appointed orally—by speaking to the agent or employee, and giving him directions.

6. Appointment by Letter, etc.—When the agent lives at a distance, or is going away some distance to do the business, a letter of authority is given to him. Such letter will usually—

(1) Grant authority to do business;
(2) Specify the business to be done;
(3) Give full directons as to how it shall be carried out.

7. Appointment by Power of Attorney.—When the business is of such a nature that the agent is required to sign notes, drafts, cheques, deeds, mortgages, etc., or to enter into contracts under seal, a formal document under seal is usually given him, called a Power of Attorney. Such Powers of Attorney may be—

(1) General—giving the agent full power to transact all the usual business of the principal; or
(2) Specific—giving authority to do one or more particular acts, and no more.

8. Form of Power of Attorney—

KNOW all men by these Presents, that I, Thomas Denton, of the Town of Barrie, County of Simcoe, and Province of Ontario, gentleman, do nominate, constitute and appoint John Smith, of the City of Stratford, in the County of Perth, manufacturer, my true and lawful attorney, for me, in my name and on my behalf to—

(*Here give full detail of the work to be done by John Smith for Denton.*)

AND for all and every of the said purposes hereinbefore mentioned, I do

hereby give and grant unto the said John Smith, full and absolute power and authority to do and execute all acts, matters, and things necessary to be done for the full and proper carrying out of all said matters entrusted to him ; and do hereby ratify and confirm, and agree to ratify and confirm and allow all and whatsoever the said John Smith shall lawfully do by virtue hereof.

In witness whereof I have hereto set my hand and seal, this 30th day of January, 1902.

SIGNED, SEALED AND DELIVERED in the presence of A. L. MCINTYRE. } FRANK DENTON. (L.S.)

9. Proving Authority.—A Power of Attorney may be proved by being executed in presence of a Notary Public ; and the Notary Public placing thereon his attestation of the execution ; or the witness may make an affidavit, similar to the affidavit of the witness to a Deed or Mortgage.

10. Who may be Principal?—Any person can do an act by an agent, that he can do personally. Hence any person in his right mind, and of age qualified to do business himself, may also do it by an agent.

11. Who may act as Agent?—Any person having understanding enough to do as he is directed, may act as an agent. Hence a minor who cannot bind himself in a contract, may bind his principal when he acts as agent.

12. Extent of Authority.—An agent has authority to do all acts necessary for the carrying out of the business entrusted to him. The instructions usually, cannot specify every act; but in many cases the instructions, are general, leaving very much to the discretion of the agent. If a person were appointed manager of an insurance company, he is an agent, but his every action could not be specifically ordered. Very much would necessarily be left for him to deal with, according to the circumstances existing in each particular case.

13. Termination of Agency.—Agency may be terminated in a number of ways:

(1) *By lapse of time*—If A appoints B his agent for one year, at the end of the time, the agency is ended. It may be continued by re-appointment.

(2) *By completion of work.* If an agent is appointed to do a certain work, or to do a particular act, when the work or act is done, his authority terminates.

(3) *By revocation by the principal.* The person giving powers to an agent, can also take those powers away. If, however, the agent has been appointed by a Power of Attorney under seal, it will require a document under seal to cancel it.

(4) *By change of condition of the parties.* If the principal dies, becomes bankrupt, or incompetent through insanity ; or where the agent

becomes incompetent through insanity, or by any other cause, where either principal or agent dies, the agency is dissolved.

14. Sub-Agents are those who act under other agents. A appoints B his agent, to do certain acts. B may appoint C to do some of them or all of them for him. The agent is principal to the sub-agent, and is governed by just the same rules of principal and agent, as exist between the original principal and him. If the sub-agent acts fraudulently, the agent suffers.

15. General Agents are such as are entrusted with all their principal's business in a certain line or for a certain district. Their authority is usually of a general nature, and not usually restricted, except by territorial or departmental lines. The manager of a Joint Stock Company, or a Mutual Insurance Company, is usually called the "general agent" or "chief agent" of the Company.

16. Special Agents are those appointed to do certain acts. Their authority limits them. If A gives B authority to sign a note, payable in three months, and he signs one payable in two months, he exceeds his authority, and he only binds his principal as far as the authority goes.

CHAPTER 39.

AGENCY.

- Principal's Liability to Agent.
- Duties of Agent to Principal.
- Principal and Third Parties.
- Agent's Liability.
- Extent of Agent's Authority.
- Effect of Notices, etc.
- Ratification and Disaffirmance.
- Commission Merchant or Factor.
- Brokers.

1. Principal's Liability to Agent.—The principal is liable to his agent for—

(1) All advances and expenses lawfully incurred about the agency;

(2) For all commissions or salary agreed upon, according to the usage of trade;

(3) For all damage sustained by the agent when following his principal's directions:

2. Duties of Agent to Principal.—An agent is bound—

(1) To use reasonable care, skill and forethought for his principal in the discharge of his business, just such as he would use if it were his own.

(2) To obey his principal's orders, except in cases of extreme necessity, or where the orders are given to do some unlawful act;

(3) To transact the business in the name of his principal;

(4) To keep an exact and true account of the business entrusted to him;

(5) To keep his principal's property separate from his own, or from that of others. If he allows it to be mixed so that it cannot be distinguished, the principal can claim all;

(6) To deposit the principal's money to the credit of the principal, in the bank, and not to the credit of his own private account.

3. The Principal's Liabilty to Third Parties.—The principal is liable to third parties for the acts of his general agents, even for the neglect or fraud of such agents. For example—If you are hurt by any accident on a railroad, you do not sue the engineer, or conductor, or operator, whose carelessness caused the accident, but you come on the company, that is, the principal who engaged the official that did the wrong. In case a special agent makes a fraudulent contract, exceeding his special authority, the principal is not liable, as it was the duty of the third party to enquire into the special authority given the special agent.

There is a general principal at law that operates in cases of general agency "*When one of two innocent parties must suffer, the one should sustain the loss who put it in the power of the wrongdoer to commit the wrong.*" By this legal doctrine, the principal is frequently charged with the acts of his general agent, because he gives him the power to do the wrong; though he does not give the instructions to do wrong.

4. Agent's Liability.—The agent is liable to his principal: (1) for loss occasioned by neglecting or refusing to carry out the principal's instructions. If he made a profit by disobeying instructions, the profit would, however, belong to the principal, and not to the agent.

(2) He is liable to third parties when he exceeds his instructions, and incurs liabilities that were not provided for in his instructions, or necessary for the carrying on of his employer's business, either by law, custom, or usage of trade.

(3) For *wilful injuries* committed on third parties, he is liable to third parties, and his principal is not liable. If your servant wilfully drove your waggon into another person's carriage and caused loss or damage, he is liable.

(4) He is liable to third parties when he signs his own name to obligations, contracts, or negotiable paper. If he signs "*John Smith, Agent,*" he is personally liable. He should sign "William Jones, per John Smith, Agent," or "William Jones, per procuration of John Smith." The latter form implies only limited powers as agent.

The Secretaries, Treasurers, Managers, etc., of Stock Companies, Corporations, etc, are simply chief or general agents for the companies or corporations, and should be careful in signing negotiable paper, etc. If they sign simply "*W. B. Stephens, Manager,*" they are personally liable. He should sign "Credit Valley Quarrying Company (Limited), per W. B. Stephens, Manager," unless he is authorized by the Company to sign his name.

5. Extent of Agent's Authority.—When instructions are given, he must follow them. If he is to receive cash in payment of debts, he has no authority to take notes or merchandise in payment.

General authority to do business or to collect debts, and give discharges for debts, does not give authority to accept bills and sign notes. Special authority is necessary to incur such liability. The usual employment of the agent sometimes gives him power to charge his principal with goods. If I sometimes send my servant for goods with instructions to have them charged, and should at another time give him the money to pay for some goods, and he puts the money in his pocket and has the goods charged to me, I am liable because it has been done before on my order. If my servant should buy goods for himself from the same man, and have them charged to me, the seller, not knowing but they are for me, I am liable to the third party. The servant is, however, liable to me.

6. Effect of Notices, Tenders, Etc.—Notice given to my agent is deemed to be given to me at the same time it is given to the agent; and payment tendered to my agent is payment tendered to me. Notice or tender made by my agent to third parties is made by me.

7. Ratification and Disaffirmance.— If an agent does business for his principal, that he is not authorized to do, his principal ratifies it if he accepts it, and disaffirms it if he refuses to make the transactions his transactions. Ratification of an act is equivalent to prior authority. Ratification may be made in two ways—

(1) By express words. In case of Stock Companies, Corporations, it is usually done by resolution of Directors, etc.

(2) By accepting the benefits accruing from the act.

8. Commission Merchant or Factor is an agent employed to sell goods for a principal.

(1) The goods are in his possession;

(2) He may sell for cash, but on credit only when so instructed by his principal;

(3) If he sells the goods in the name of his principal, a purchaser cannot set off a personal debt against the factor as payment for the goods.

(4) He has a lien on the goods for advances made on them, and for storage and all legitimate expenses in connection with them.

(5) He has not a lien on the goods when they are in transit for bills of exchange accepted as advances on them, unless the goods have been constructively delivered to him by assignment of the bill of lading.

9. A Broker is a person who does business, or buys or sells for another. A Broker differs from a factor or commission merchant, in this, that he does not have the goods in his possession. He is simply a sort of middle-man, who makes bargains for people who are,—

(1) Ignorant to a greater or less extent of the business they intend to have done, and they find that the broker understands it and can do it better than they can ; or

(2) The broker has better business connections than they have, and can procure better rates or prices for them ; or

(3) They do not wish to be known personally in the business until the transaction is complete.

He cannot act for both buyer and seller at once. He can act for one only. If he acted for both, he would be placed in a position to perpetrate fraud on one or both parties.

Brokers differ in name according to the kind of business they do. A Stock Broker buys and sells stocks, bonds and securities. A Real Estate Broker deals in houses, lands, etc. An Insurance Broker effects insurances at best rates for his customers, etc. Their relations and liabilities to principals and third parties are the same as agents under similar circumstances, and their pay a commission on the value of the transaction.

CHAPTER 40.

PARTNERSHIP.

- Definition.
- Various Names.
- Community of Profit.
- Definition of Terms.
- Who May be a Partner.
- General Partners.
- Silent Partners.
- Limited Partners.
- Nominal Partners.
- How Formed.
- Partner by Implication.
- Partner by Oral Contract.
- Partner by Written Contract.

1. Definition.—Partnership is a voluntary contract between two or more persons to contribute their property, labor, skill, knowledge, or credit, or some

or all of them into some lawful business enterprise, for the purpose of making profit, and to divide any profit or bear any loss they may make in course of the business, in such proportions as have been agreed upon.

2. Various Names.—A Partnership is also known as a Co-partnership, a Firm, a House, a Company. These several names are synonymous, and refer to the Partnership collectively. When the persons composing the partnership are referred to individually, each one is called a *partner.*

3. Community of Profit.—The central idea in all partnerships is to make profit; and the legal test of any partnership is a "*Community of profit,*" that is, all the profits made by the firm go into one common fund, and are divided after the losses and expenses have been deducted. In case it is desirable to prove the existence of a partnership at law, all that is necessary is to show that there is a community of profit, that is, a common profit fund for the parties concerned.

4. Definition of Terms—

Capital is the property, real or personal, invested in the business. This is sometimes called the *investment.*

Resources, sometimes called the *assets*, are, all property, money, etc., held by the firm, and all debts due them either on negotiable paper or book account.

Liabilities are all debts owing by the firm, either on negotiable paper, or book account, or on non-negotiable contracts, such as mortgages, etc.

Net Capital is the balance of resources over the liabilities at any time. Such a balance at the beginning of a business is called the *Net Investment.*

Net Insolvency is the excess of the liabilities over the resources.

Gross Gain or profit, is the total gains without deducting any losses or expenses.

Net Gain or profit, is the balance remaining when the losses and expenses are deducted from the profits.

Gross Loss is the total loss without deducting any gains.

Net Loss is the excess of losses and expenses over the profits in any business.

5. Who May be a Partner.—Any person capable of doing business —that is, any person of age and able to make ordinary contracts. According to the nature of their agreements, partners may be divided into,—

(1) General Partners;
(2) Silent Partners;
(3) Limited Partners;
(4) Nominal Partners

6. **A General Partner**, sometimes called an ostensible partner, is one that is known to the public as a partner.

[1] He generally appears at the place of business, and takes an active interest in the conduct of its affairs.

[2] He is represented in the firm name, either by having his name appear in it, or by the term "Co." (Company.)

7. **A Silent Partner**, sometimes called a sleeping or dormant partner, is one who contributes capital and has an interest in the business.

[1] He is not known to the public generally as a partner.

[2] He does not take any active interest in the affairs of the firm. If you wanted to do business with the firm, you would not find him in the office to attend to your wants.

[3] He is not represented in the firm name by anything more definite than Co. (Company).

8. **A Limited Partner**, sometimes called a *special partner*, is a *silent* partner, who, at the making of the partnership contract, stipulates that he will not agree to be liable for losses beyond a certain amount. This sum must not be less than his capital invested. It should be noticed in this connection:—

(1) That a general partner cannot limit his liability to a fixed sum, because he has the working of the business and knows all about it, and might take this way of defrauding creditors.

(2) That any agreement as to limited liability must be in the articles of agreement *when the partnership is formed*, and in the declaration or certificate of the partnership that is registered.

9. **A Nominal Partner** is one who has no financial interest in the business, but who lends his name and credit to the business. He may be liable for the firm debts, though he gets no profit.

EXAMPLE.—Jones is a member of the firm of Jones & Brown. He sells his interest in the business to Smith, but allows his name to remain in the firm name, so as not to make known to the public generally that the popular and wealthy Mr. Jones has severed his connection with the firm. Jones is held out to the public as a partner. Any person giving credit to the firm in good faith, believing Jones to be a partner, can hold him responsible for the debt in case of failure to pay by the firm. Any person doing business with the firm, and knowing that Jones was only a partner in *name*, could not hold him for the firm debts.

10. **How Formed.**—Partnership contracts are formed as all other contracts—by *agreement* of the parties. An agreement may be in express words.

or by persons simply engaged in business together without any definite stipulations. The agreement is, therefore either,

(1) Implied,

(2) Expressed, { (*a*) Oral contract, (*b*) Written simple Contract, (*c*) Written sealed Contract.

11. Partner by Implication.—It was mentioned in a preceding section (No. 3) that sharing in a common profit fund is the primary element of a partnership. If persons do business together without any agreement, they may be proved partners. A, in Ontario, might buy horses, and ship to B, in Winnipeg; B sells the horses; they divide the profit made on the transaction—they are partners by implication.

12. Partners by Oral Contract.—Many partnerships are formed by the parties simply meeting and agreeing among themselves—the terms are not always stipulated in full. Such contracts are not desirable, as many disputes arise out of an imperfect understanding of the *terms* of the contract. Oral contracts should not be depended on when the business of the firm is of any consequence; and, besides, oral contracts, under the Statute of Frauds, are good for only one year.

13. Partners by Written Contract.—When any large amount is involved, the articles of agreement should always be in writing. A seal added, to make it a specialty contract, makes it better and more binding. Such written agreements are called "Partnership Contracts," "Articles of Partnership," "Partnership Deeds," &c. They should contain—

(1) The description of the parties and firm name;
(2) The nature of the business and the place where it is to be carried on. This is called the undertaking;
(3) The investment of each partner, and the mode of division of profits and losses;
(4) The date of commencement and the duration of the partnership;
(5) Limitations of powers of partners, and their duties to one another;
(6) Provisions for keeping accounts and settlement of partnership affairs;
(7) Provisions for dissolution and final adjustment of partnership affairs;
(8) Provisions for settlement in case of death of a partner;
(9) It is very proper to make provision for the signing of the firm name, —who shall do it, and who shall not;
(10) It is very proper to include a provision binding all partners not to endorse paper for any other firms personally, or become surety or bail for any one without consent of the others, as a sudden withdrawal of a partner's interest might cause the firm to collapse, if it occurred at a critical period.

CHAPTER 41.

PARTNERSHIP.

1. **Contribution of Capital.**—Each partner contributes, in some way, to the capital or maintenance of the firm. He may contribute,—

(1) A capital of cash, real estate, or personal property;

(2) A secret of some process of manufacturing a patent right, or something of use to the firm;

(3) Labor, or skill, or work, or experience, or knowledge, or time in management;

(4) Good-will of an established business;

(5) Credit—the use of his name in endorsement, etc., for the firm.

A partner may contribute any one or all of the foregoing to the Partnership, and draw the profits on account of the benefits the firm derives from him.

2. **Division of Profits.**—Profits are frequently divided,—

(1) According to a fixed proportion, say one-third to each of three partners; or a half to one, a third to another, and a sixth to the third;

(2) According to capital invested in the business;

(3) By allowing each a salary, and dividing profits remaining according to a fixed proportion, or according to capital invested;

(4) By giving each partner interest on his capital, and dividing the remainder according to some fixed proportion;

(5) By a salary to each for service, interest to each on capital invested, and remainder to be divided according to some fixed proportion, say equally, or two-thirds to one, and one-third to the other.

In many firms it is necessary to adopt the fifth method of three-fold division that gives :—

(*a*) Pay for personal service, skill, etc.;

(*b*) Pay for capital invested;

(*c*) A general sharing up of the remaining profits to every member of the firm, whether active, silent, or limited partner.

3. Form of Articles of Partnership—

ARTICLES OF AGREEMENT made the first day of March, in the year of our Lord one thousand nine hundred and two,

Between John Henry Christie, James Christie and, Andrew Agar, all of the Town of Meaford in the County of Grey, Province of Ontario, Tinsmiths.

Whereas the said parties hereto respectively are desirous of entering into a Co-partnership, in the business of Hardware, Tinsmithing, Steam-fitting, Plumbing, etc., at Meaford aforesaid, for the term, and subject to the stipulations hereinafter expressed :

Now Therefore, these Presents Witness, that each of them the said parties hereto respectively, for himself, his heirs, executors and administrators, hereby covenants with the other of them, his executors and administrators, in manner following, that is to say :

First.—That the said parties hereto respectively shall henceforth be and continue partners together in the said business of Hardware, Tinsmithing, Steam-Fitting, Plumbing, etc., for the full term of Five Years, to be computed from the first day of March, one thousand nine hundred and two, if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

Second.—That the said business shall be carried on under the firm name of "Christie & Agar."

Third.—That the said partners shall invest capitial as follows :—John Henry Christie, Six Hundred Dollars, cash ; James Christie, Four Hundred Dollars, cash ; and Andrew Agar, Five Hundred Dollars, and Tools valued at One Hundred Dollars.

Fourth.—That the said partners shall be entitled to salary in lieu of service, as follows :—John Henry Christie, as foreman of Steam-Fitting and Plumbing, Nine Dollars per week ; James Christie, as manager of Hardware business and book-keeper, Eight Dollars per week; and Andrew Agar, as foreman in Tin-shop, Nine Dollars per week

Fifth.—That the said partners shall be entitled to the profits of the said business in the proportions following, that is to say:—According to investment the first year, and according to the net credit of each, at the beginning of each subsequent year ;

And that all losses in the said business shall be borne by them in the same proportions (unless the same shall be occasioned by the wilful neglect or default of one of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise).

Sixth.—That the said partners shall each be at liberty from time to time during the said Partnership, to draw out of the said business, for private use, any sum or sums of money not exceeding for each, the sum of Two Hundred Dollars per annum, such sums to be duly charged to each of them respectively ; and no greater amount to be drawn by either of the said partners, except by mutual consent: and interest at Six per cent. per annum, shall be charged to each partner for such withdrawal from the date of the withdrawal until it is repaid, or until next annual settlement.

Seventh.—That all rent, taxes, salaries, wages and other outgoing expenses incurred in respect of the said business, shall be paid and borne out of the said business.

EIGHTH.—That the said partners shall keep, or cause to be kept, proper and correct books of account of all partnership moneys received and paid, and of all business transacted on partnership account, and all other matters of which accounts ought to be kept, according to the usual and regular course of the said business, which said books shall be open to the inspection of all the partners, or their *legal representatives*. A general balance or statement of the said accounts, stock-in-trade and business, and of accounts between the said partners, shall be made and taken on the first day of March in each year of the said term, and oftener, if required.

NINTH.—That the said partners shall be true and just to each other in all matters of the said co-partnership, and shall at all times, during the continuance thereof, diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto; and neither of them shall transact or be engaged in any other business or trade whatsoever. And the said partners, or either of them, during the continuance of the said co-partnership, shall not, neither in the name of the said partnership, or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing by which, or by means of which, the said partnership moneys or effects shall be seized, attached or taken in execution; and in case either partner shall fail or make default in the performance of any of the agreements or articles of said partnership, in so far as the same is or are to be observed by him, then the other partners shall represent in writing to such partner offending, in what he may be so in default; and in case the same shall not be rectified by a time to be specified for that purpose by the partner so representing, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid by the partners offended against, be dissolved and determined accordingly.

TENTH.—That in case either of the said partners shall die before the expiration of the term of the said co-partnership, then the surviving partners shall, within the six calendar months next after such decease, settle and adjust with the representatives of such deceased partner, all accounts, matters and things relating to the said co-partnership, and that the said survivors shall continue to carry on thenceforth for their sole benefit, the co-partnership business.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERDED	J. H. CHRISTIE,	(SEAL)
In the presence of	JAS. CHRISTIE,	(SEAL)
W. B. ROBB.	ANDREW AGAR,	(SEAL)

4. Legal Representatives.—The term Legal Representatives, mentioned in the Eighth clause of the foregoing form, is a term not very well understood. The ordinary blank form has been used so as to call attention to an important point. A man's legal representative, mentioned in clause Eight of Articles of Partnership, is not an agent, or attorney, or an accountant that he

employs to look into the accounts on his behalf, but means his Executor or Administrator who represents him after death. If a partner wishes to have power to employ some one to look into the affairs of the business for him at any future time, in case he is dissatisfied, he should add to clause No. 8 after the word "respresentatives" the words "or agents or attorneys."

5. Provision for Dissolution.—Partnership Agreements are of two kinds, considered from the view point of the time they have to run;—

(1) When made for a definite time, like five years, in first clause of foregoing form.

(2) When made for an indefinite time, that is, during the pleasure of the partners.

A Partnership, whether for a definite or indefinite term, may be dissolved any time, by *mutual consent.* If it is the desire or intention that a partner be relieved from a partnership when he desires, then something like the subjoined clause should be added, as mutual consent means the consent of all partners, and if one withheld his consent, he could block dissolution, even if the agreement plainly expressed that it could be dissolved by mutual consent.

6. Form of Provision for Dissolution.—"And it is hereby agreed, in the case of dissatisfaction on the part of any or all of the partners, any one of them may terminate this partnership on giving three months notice in writing, and the person giving such notice shall be prepared, either to buy out his partners' share or sell his interest in the business at an agreed or arbitrated value.

7. Registration of Partnership.—It is not sufficient to draw up a Partnership Deed, to comply with the laws of Ontario, and almost all Canadian Provinces and American States. It is necessary to register a Declaration of the formation of such Partnership, so that a person who desires to do business with such Partnership may be able to find out, readily and surely, who are to be financially responsible to him for contracts he may make. It is also necessary to be able to know the members of a firm, in case a suit-at-law is to be brought against them. The Revised Statutes of Ontario, Cap. 130, provides:—

(1) That a Declaration setting forth the names of all of the partners, and the firm-name, etc., be registered in the County Registry Office where the firm business is carried on.

(2) That any individual who wishes to add "& Co." to his name, or to use any special name other than his own, must register a Declaration to this effect.

(3) Such Registration must be made within Six months after the formation of the Partnership.

(4) In case of neglect to register a Declaration of Partnership, the partnership may be fined One Hundred Dollars. One-half of the fines go to the Crown, and the other half to the Informant.

In Manitoba the Declaration is filed in the office of the Prothonotary of the Court of Queen's Bench, or the Deputy Clerk of the Crown and Common Pleas for the Judicial District.

8. *Form for Registration:*

The following is a form of Partnership Declaration for Registering in the County Registry Office.

PROVINCE OF ONTARIO,
COUNTY OF GREY.

We, John Henry Christie, James Christie, and Andrew Agar, of Meaford, in the County of Grey, in the Province of Ontario, hereby certify:—

1. That we have carried on, and intend to carry on the trade and business of Hardware, Tinsmithing, Steam-Fitting, Plumbing, etc., at Meaford, in partnership, under the name and firm of Christie & Agar.

2. That the said partnership has subsisted since the first day of March, 1902.

3. That we are and have been since the said day the only members of the said partnership.

Witness our hands at Meaford
this 21st day of March,
A.D. 1902.

JOHN HENRY CHRISTIE.
JAMES CHRISTIE.
ANDREW AGAR.

9. **Salary Based on Profits.**—In many firms it is customary to give a chief clerk a percentage of the net profit of the firm as salary, such salary operating to make the employee more faithful and diligent in pushing business, and careful as to expenses. This is the only case where a person may share profits without being liable as a partner. There must be a definite contract to this effect, in order that such employee may be free from liability for the firm's debts.

10. **Ownership of Invested Capital.**—As soon as the property of a partner is invested in a Partnership, it becomes the joint property of all the partners. This is always the case where all have contributed property; However, in case one contributes capital, and another skill or labor only, and takes his profit yearly, he does not acquire any ownership in the property of his partner.

CHAPTER 42.

PARTNERSHIP.

- Powers of Partners.
- Acts a Partner Must Not Do.
- Effect of Agreement Between Partners.
- Partners Cannot Sue the Firm, or One Another.
- Liabilities in Case of Insolvency.
- Dissolution of Partnership—
  - (1) By Expiration of Time.
  - (2) " Completion of Work.
  - (3) " Mutual Consent.
  - (4) " Sale of Partner's Interests.
  - (5) " Death or Incapacity of Partner.
  - (6) " Bankruptcy of Partner.
  - (7) " Decree of the Court.
- Division of Assets.
- Liabilities of Retiring Partner.
- Advertising Dissolution.
- Registration of Notice of Dissolution.
- Power of Partners After Dissolution.

1. Powers of Partners.—Each general partner, unless prohibited in the Articles of Partnership, is a general agent of the firm, and it is within his power to act for the firm.

(1) He may bind the firm in all matters that come within the limits of the undertaking of the firm. For example: A firm is in the grocery business; a member of the firm could properly bind the firm in such transactions as properly belong to the Grocery business—he could not in the real estate or hardware business.

(2) He may receive payment of debts due to the firm, or compromise them, or represent the firm in a suit at law.

(3) He may make, sign and accept negotiable paper for the firm, in the regular course of its business.

(4) He may borrow money necessary for the carrying on of the firm's trade.

2. Acts a Partner Must Not Do—

(1) Generally speaking, he must not do anything contrary to the agreements in the articles of co-partnership, nor do anything prejudicial to the best interests of the firm, for his own personal advantage.

(2) He must not use the property of the firm for his own use.

(3) He must not use the credit of the firm for his own personal benefit.

(4) He cannot bind the firm by giving the firm's note in payment of his personal debt.

The consent of the firm to any of the foregoing prohibitions, makes the act the act of the firm and not of the individual.

3. Effect of Agreement between Partners.—Partners may make such agreements among themselves as they think desirable, and all of them are bound by such agreements as among themselves. These promises cannot be imposed on outside parties.

4. Partners Cannot Sue the Firm, or One Another.—If one partner sued the firm, he would in reality be sueing himself, as the firm does not exist without him. Should he bring an action against one of the partners, it would have the effect of dissolving the partnership.

5. Liabilities in Case of Insolvency.—In case a Partnership becomes insolvent, the entire partnership property would be taken to satisfy the firm's debts. If a portion of the debts remained unsatisfied, the private property of the partners, that they had not put into the concern, would, subject to priority, of the partner's private creditors, be taken until the debts were fully satisfied, in case enough could be found to satisfy them.

The only exception to this is in the case of a limited or special partner—his liability is not greater than the capital invested. In case he had withdrawn part of his capital, he would be liable for the amount withdrawn.

6. Dissolution of Partnership is the separating of partners and the ending of their business relations together. This may be accomplished in various ways.

(1) By expiration of time;
(2) By completion of work for which it was formed;
(3) By mutual consent;
(4) By sale of partner's interest;
(5) By death or incapacity of a partner;
(6) Bankruptcy of the firm or of a partner;
(7) Decree of the Court.

7. Dissolution by Expiration of Time.—The majority of Partnerships are made for a definite length of time—one year, two years, five years, etc. Immediately upon the completion of the time, the concern is dissolved. It may be continued by a new agreement. If no stated period is mentioned in the written agreement, the partners may have an agreement among themselves as to the time the contract is to end.

8. Dissolution on Completion of Work.—It is not uncommon for persons to become partners for one simple contract. A and B might become partners to build six miles of railroad. At the completion of the work, the partnership would be dissolved, because the purpose for which it was formed was accomplished, though they may not specify, in the agreement, the terminating of the contract. A dissolution, on completion of the work, is implied.

9. Dissolution by Mutual Consent.—This is the common method of ending a Partnership contract. The partners entered into the partnership contract of their own free will and accord, for their mutual benefit; and they can, by another new agreement, just as freely cancel the old contract and be separated. It must be with the consent of all the parties; and if the partnership contract is under seal, the agreement for dissolution should also be under seal.

10. Dissolution by Sale of Partner's Interest.—A partner may, with the consent of his associate partners, sell his interest or share in the business. It would not be proper for him to be able to sell without consent, as he might put a partner in his place who would not be agreeable or congenial to the remaining partners. Just as soon as a partner sells his interest, the agreement is voided—the new man cannot simply take the place. There must be a new agreement between the remaining old partners and the new one, which means new Articles of Partnership. It may be in identical terms with the old. It is however, new, because of the new partner.

11. Dissolution by Death or Incapacity of Partners.—A partner dies; there is no agreement between his heirs and the remaining partners, and the Partnership is dissolved. By a new agreement, one or more of the personal representatives of the deceased partner may take his place, but it is a new partnership by a new contract. The same is true in case of insanity of a partner.

12. Dissolution by Bankruptcy of a Partner.—When a partner in a firm becomes bankrupt personally, the partnership is dissolved, his share in the business passes to his creditors, and they, of course, are not partners.

13. Dissolution by Decree of the Court.—If partners are continually quarrelling or disagreeing and pulling in different directions, and they cannot agree to dissolve, application may be made to a competent Court, and an order obtained dissolving it.

The following are common grounds for granting an Order for Dissolution:

(1) Improper or fraudulent conduct by a partner;
(2) Violation of the articles of partnership;
(3) Exclusion of partner from sharing in the carrying on of the business;

(4) Continued quarrelling so as to render it impossible to carry on properly the business of the firm;

(5) Inability of partner to act on account of permanent illness, or by being disabled;

(6) Intemperance, immorality or dissipation of a partner, that will tend to impair the credit or business of the firm.

14. Division of Assets.—In case of dissolution, the business is very frequently carried on by a new Partnership formed from the remaining part of the firm; or perhaps a new partner may be taken in, in place of the retiring one. In the first case, a part of the assets of the firm, such as cash, bills receivable, real estate, etc., are handed to the retiring partner for his interest.

If a new partner takes the place of an old one, he frequently pays him a sum and takes his place.

In some cases the liabilities of the firm are paid off, and the remaining assets divided among the partners. Sometimes these are all converted into cash before a division is made.

15. Liabilities of Retiring Partner.—A partner retiring from a firm is personally liable to outside parties for all debts contracted while he was in the firm. Credit was given the firm partly on the strength of his name, and he continues to be liable until that debt is paid, unless the creditor agrees to accept the new firm for the debt, thus discharging the one retiring.

16. Advertising the Dissolution.—When a partner retires from a firm it is customary to give public notice by advertisement in the local papers, and by sending a circular-letter announcing the dissolution, to all persons who give credit to the firm. If this is not done, any person giving the firm credit, not knowing of such dissolution, may hold the retired partner liable for debts contracted by the new firm in good faith, on the standing of the partner that claims to have retired.

17. Registration of Notice of Dissolution.—Not only must the firm register the Articles of Partnership, but a retiring partner must also register a Declaration of Dissolution of Partnership, if he wishes to free himself from being responsible for the debts that the firm may contract after he leaves them.

The following is a form suitable for Registration.

PROVINCE OF ONTARIO, } I, John Henry Christie, formerly a member
COUNTY OF GREY. } of the firm carrying on the business of Hardware, Tinsmithing, Steam-Fitting, Plumbing, etc., at Meaford, in the County of Grey, under the style of Christie & Agar, do hereby certify that the said partnership was, on the first day of March, dissolved.

Witness my hand, at Meaford, the third day of March, 1902.

ROBERT WATSON, J. H. CHRISTIE.
Witness.

18 Powers of Partners after Dissolution.—If the Partnership is dissolved, and the business is to be wound up, a partner may demand that partnership assets be first used to pay off all liabilities, before any is appropriated by partners.

If the assets are vested in one party as trustee for the others, that trustee has no power to go on with new business, only such as is required to beneficially wind up the affairs of the dissolved firm.

CHAPTER 43.

CORPORATIONS AND JOINT STOCK COMPANIES.

- Definition.
- Distinguished from Partnership.
- Kinds of Corporations.
- Public Corporations.
- Ecclesiastical Corporations.
- Eleemosynary.
- Joint Stock Companies.
- Incorporation by Act of Parliament.
- Incorporation Under General Statute.
- Federal or Provincial Charter.
- Associations, Societies, Etc.
- Laws of Government.

1. Definition.—A Corporation is an association of individuals formed and authorized by law to act as a single person. So far as business is concerned, a Corporation has all the qualifications that an individual has, except that it cannot be punished by imprisonment. A Corporation is really an artificial person. It has the following legal capabilities, one of which, (i. e., the first) is not possessed by a partnership.

(1) Perpetual succession, that is, it is not dissolved by one of the members retiring, or a new member coming in.

(2) It can sue and be sued at law.

(3) It can purchase or sell real or personal property, under Statutory provisions relating thereto.

(4) It can enter into all the contracts that a single person can, if within the limits of its charter, or act of incorporation.

(5) It may make by-laws, rules, etc., for its own government.

(6) It should have a corporate seal, under which it transacts its business.

(7) It may appoint officers, who are the agents for the carrying on of its business.

2. Distinguished from Partnership.—In a Corporation, the law sees only the body corporate, and does not know the individuals composing it; they are not liable as individuals on the contracts of the Corporation. In Partnership, the individual members are liable for the firm debts to the full extent of their assets.

3. Kinds of Corporations.—Corporations in America may be divided as follows :—

- Non-trading,
  - Public,
    - Incorporated.
    - Recognized by usage.
  - Ecclesiastical,
  - Eleemosynary.
- Trading,
  - Joint Stock Companies.
  - Associations.
- Quasi.
  - Benefit Societies.
  - Mutual Insurance Corporations.

A Non-trading Corporation is one that is not authorized to carry on business for the profit or emolument of its members.

A Trading Corporation is formed for the purpose of carrying on trade or business for the profit of its Stockholders or members. The trading corporations concern us more particularly in Business Law.

A Quasi Corporation is one that does not carry on trade for the purpose of making profit, but does business for the benefit of its members, to save them money, etc. Examples—

A Mutual Fire Insurance Association ; or a Mutual Sick Benefit or Insurance Society.

4. Public and Municipal Corporations, are those created by Government for the purpose of carrying on business that belongs to the people of a district. Example—

A Township or County,—the Township of Sydenham.

A Town, Village or City,—the Town of Collingwood.

A Province, State or Country,—the Province of Ontario.

All such are formed by Parliament, and are governed by Statutes giving authority to conduct the business and regulate the conduct of the citizens within a certain district.

5. Ecclesiastical Corporations are those formed by Act of Parliament, giving certain churches, or officials in churches, corporate powers :

(1) For the purpose of holding and managing the real estate and other property belonging to the Church.

(2) For the purpse of church government, to enable them to constituted

church courts, assemblies, etc., for the controlling of its members and the regulation of its standard of doctrine, etc.

As examples of this we might mention the Methodist Church in Canada; and the Presbyterian Church in Canada; the Bishop of Huron.

6. **Eleemosynary Corporations** are those formed for charitable purposes, for the perpetual distribution of alms or bounty.

As examples, we have hospitals, homes for the aged, infirm, etc. certain schools—in fact, all such corporations as have for their object the care, assistance, relief and help of the poor and needy or unfortunate.

7. **Joint Stock Companies** are formed by private enterprise, for the purpose of carrying on some business, such as manufacturing, banking, railroading, insurance, etc., with the express intention of making profit for the members, who are called stockholders or shareholders. These companies are created by the statutes of the country or Province where organized, and derive their powers from such country or Province; and are responsible, and, in most cases, are compelled to report annually at least to such country or Province the status of their capital stock; and frequently, a full statement of their business. They are created in two ways:

(1) By act of Parliament or Legislature;
(2) Under the provisions of the General Statute.

The document issued under the Great Seal of the country or Province, which sets forth the powers and privileges granted, is called a Charter, or Letters Patent. Whether issued by special Act of Parliament, or under the general statute, it forms a contract between the country or Province and the corporation.

8. **Incorporated by Act of Parliament.**—When a number of persons desire to enter into such a business, as banking, railroading, and other enterprises, in which the public are largely and specially interested, it is necessary to apply directly to Parliament for an act of Incorporation. A Special Act is passed, and the Charter is granted. The Charter will refer to the Joint Stock Co's Clauses' Act, for the general principles of organization and government, making such Act a part of the contract between the power that grants the Charter and the company.

9. **Incorporated under General Statute.**—The organizing of Joint Stock Companies has become so common that it has been found necessary by the Federal Parliament, as well as the Provincial Legislatures, to allow of the formation of companies for mercantile, manufacturing and other purposes, at any time, subject only to the sanction of the Governor-in-Council.

The principles of organization and government of all such concerns are so much alike that a Joint Stock Companies' Act has been passed, by not only Federal but Provincial Legislatures, which gives the general powers and privileges to such companies as have received their charters directly from the Governor-in-Council. There is now no delay caused by waiting from one session of Parliament until another, to get an Act passed.

10. Federal or Provincial Charter.—The Dominion Parliament reserves the right to legislate on all matters that have to do with the general interests of all Canadian people,—Commerce, for instance,—therefore only the Dominion Parliament grants charters to Banks.

If the business is one for which branch offices or agencies are only to be established in the Province where the Head Office is, then it is only necessary to apply to the Provincial Legislature for Incorporation.

If the Corporation will have agencies or offices in more than one Province, a Charter should be obtained from the Dominion Government. For Example—

An Insurance Company, that only intends doing business in Ontario, need only apply to the Provincial Legislature of Ontario for a Charter. If, however, they desire to do business in other Provinces, their Charter should be from the Dominion Parliament.

11. Associations, Societies, &c.—Provisions have been made by general Acts of Parliament, for the forming of Associations for mutual insurance co-operative associations for carrying on mercantile business, manufacturing, etc., by registering in the office of the Clerk of the Peace of the County a statement of the business intended to be carried on, together with the corporate name and the rules and by-laws for the government of the society, duly sworn to before a Notary or Magistrate; also sending to the government, at the same time, a copy of the document so registered.

12. Laws for Government.—All corporations are the creation of some legislative body; and the body that gives them power to do business likewise makes lnws for their government. The following is a short summary of such laws as they effect Joint Stock Companies in Canada:—

(1) There must be at least five members, before they can become incorporated. The officers at the beginning are called Provisional Directors. When organization is complete, regular officers are appointed.

(2) Officers should be elected once a year, at a general meeting of Stockholders.

(3) A general statement of the affairs should be submitted to the Shareholders once a year at least.

(4) The Company must report to the Government that incorporated it, at least once a year, and oftener, if required.

(5) Proper Books of Account must be kept for the ordinary business transactions of the Company.

(6) Special Books must be kept for the capital of the Stockholders, showing clearly all transactions, transfers, etc.

(7) When a dividend is paid, it must be paid out of profits, and not out of capital.

(8) To have a chief office, and to keep a sign board, with the name of the Company painted thereon, at such Head Office.

(9) The word "limited" spelled out in full, must be in the name of every such company in all advertisements and documents issued by it.

CHAPTER 44.

JOINT STOCK COMPANIES.

- The Organization.
- Shares.
- Authorized Capital.
- Subscribed Capital.
- Paid up Capital.
- Preference Stock.
- Guaranteed or Debenture Stock.
- Calls.
- Internal Management—Form of Proxy.
- General Powers of Stockholders.
- Corporations Act through their Officers.
- Power to Contract.
- Limited Liability.
- Double Liability.

7. The Organization.—The first steps to be taken in organization of a company are—

(1) To advertise, in the *Gazette*, that it is the intention to apply to the Provincial or Dominion Government for Letters Patent of Incorporation.

(2) To issue a Prospectus, which should give full particulars regarding the Company to be organized.

(*a*) The Name of the Company.

(*b*) The amount of capital, and the number and value of the shares into which it is to be divided.

(*c*) The Names of the Provisional Officers.

(*d*) The nature of the undertaking of the Company, that is, what business the Company will do.

(*e*) The advantages, profits, dividends or emoluments to be gained by stockholders.

(*f*) The conditions on which the stock is sold, including terms of payment of same.

(3) To get a number of signatures to the stock book (not less than five persons.)

(4) To apply to the Provincial or Dominion Government for a charter. There must not be less than five applicants.

(5) On the issue of the Letters Patent by the Government, call a meeting of the Provisional Directors and proceed to allot Stock, and otherwise push the organization of the Company.

(6) Get out by-laws, rules, etc., for the government of the management of the Company.

(7) When sufficient Stock is subscribed, and the calls paid on it, so that there is working capital enough to begin business, the Provisional Directors should call a *General Meeting* of the stockholders, and have regular officers elected, to carry on the work of the company. The Company is then ready to carry on their regular business, which is sometimes called their undertaking.

8. Shares.—The Capital Stock of every Company is divided into a number of equal portions, called "shares," and every stockholder shall have one or more of these shares. A partner's capital in an ordinary partnrship may be any sum. In a stock company, each shareholder must hold an even amount, and no cents or fraction shares.

The amount of the shares into which the capital of many of the larger companies are divided is $100 each. The capital of smaller undertakings, and those of a local nature, is divided into smaller shares—$50, $25, $20, $10, and even $1 shares. The shares in Mining and Development Companies are usually $1 each.

9. Authorized Capital.—This is the amount allowed by the Charter of the Company as the maximum limit of the stock that can be taken up. Authorized Capital, $5000, means that the stockholders may subscribe to the extent of $5000. This may be increased any time by obtaining a Supplementary Charter.

10. Subscribed Capital.—This is the amount of the authorized capital that the stockholders have signed their names for—the amount of the stock taken. This might be all the Authorized Capital, or it might be a very small portion of it.

11. Paid up Capital.—This is the actual working capital of the Company, sometimes called "Cash Capital." This may be all the authorized capital, if it is all subscribed, or it may be all subscribed capital, or it might be only 10 per cent. of the subscribed capital. A Company might have authorized capital $5000, subscribed capital $5000, (if all signed for); and paid up capital $5000, (if all paid up); or the authorized capital $5000, the subscribed capital $100, and the paid up or working capital $10.

12. Preference Stock is such as is issued to procure additional working capital, and is given, (by agreement with the original stockholders,) a right to the first division of profits every year. Each subsequent issue of Preference Stock has a preference to profits over all previous issues; a fourth preference stock would get dividends before a third; a third before a second, etc.; and all the Preference Stock before the original stockholders get any.

13. Guaranteed, or Debenture Stock, is such that dividends at a certain rate must be paid every year, even out of the stock of the previous stockholders, who stand as guarantors, if there is no profit.

14. Calls.—When the management of a Company asks the stockholders to pay up a certain per cent. of their subscribed stock, it is denominated "making a call."

Internal Management.—The management of any Company is very much the same as an ordinary society. Officers are chosen under powers given in the charter. The acts of the whole body corporate, as well as the acts of the managing officers, are in the form of resolutions, by-laws, etc., and are recorded in a minute book. The officers of a Company are called Directors; and the Directors appoint officers among themselves, such as President, Vice-President, Secretary, Treasurer, Manager, etc. The by-laws of the company will specify the duties of each officer. The Directors are usually elected by ballot. Each shareholder has one vote for each share he holds in his own name. If he cannot attend the meeting, he may appoint another shareholder to vote for him by giving a short form of Power of Attorney, usually called a Proxy. The following is about the usual form.

Form of Proxy:

KNOW all men by these presents that I, George Rogers, of the city of Toronto, gentleman, being the holder of Ten shares in the Capital Stock of the Mono Quarrying Company, limited, do hereby nominate, constitute and appoint Fred Arthur Bale, my attorney for me in my place and stead, to vote

as my Proxy at the election of the Directors, and on all other business that shall come before the Annual Meeting of the said Company, to be held at Orangeville on the 20th day of March, 1903, and at every adjournment of said meeting.

Signed, Sealed and Delivered in the presence of D. VANDUSEN. } GEORGE ROGERS. (L.S.)

2. General Powers of Stockholders.—The Stockholders have power to elect officers to act as the agents of the Company, and to make by-laws for their Direction. They may also give general directions to officers what to do, and how to do it. All of these acts must, of course, but in accordance with the laws of the land, and consistent with the charter. Practically, however, the shareholder expends his voting powers in accepting the annual financial statement, and in electing the Directors.

3. Corporations Act through their Officers.—When such officers are appointed, the power of the stockholders to do business is really exhausted. It is placed in the hands of the Directors, who are agents of the Company, and bind such Company by their acts.

If officers are guilty of fraud, misapplication of funds, etc., they are liable to the stockholders and amenable to the laws of the land.

If they are guilty of negligence, they are liable to the shareholders.

If they are incompetent or unworthy of confidence, others can be elected in their place, at the close of their term of office.

4. Power to Contract.—A corporation may contract as freely as any individual, so long as the contract is legal and within the powers granted it by Government in the charter.

A gas company would not be justified in supplying electric light; nor a banking company in running a steamboat.

The business is done by its officers, and the assent is given to a contract by the signature of the chief officers, and the affixing of the corporate seal.

5. Limited Liability.—In many companies the word "limited" appears as part of the corporate name. The Trust and Loan Company (limited,) the National Produce Company (limited). The presence of this word shows that the stockholders are only liable for the amount of stock that they subscribe for. That is, if John Smith subscribes for $1000 of stock, he is liable to the company and its creditors for the amount, until it is paid. If it is all paid up, he cannot be called on to pay any more, even if the company is insolvent, The word "limited" should be spelled out in full, not abreviated.

6. Double Liability.—All chartered banks in Canada have a clause in their charter by which each shareholder is held liable for all the stock he subscribes for; and in case of insolvency, as much more. If Mr. Smith subscribes for $500 of bank stock and pays it all up, he is still liable for $500 more, in case the Bank goes into liquidation.

CHAPTER 45.

JOINT STOCK COMPANIES.

- Issue of Stock.
  - Form of Application for Shares.
  - " " Instalment Scrip.
  - " " Stock Certificate.
- Stock Book and Form of Stock Book.
- Signature by Attorney and Form of Power of Attorney.
- Transfer of Stock and Form of Transfer Certificate.
- Dividends.
- Cancellation of Stock.
- Dissolution.
- Liabilities.

1. Issue of Stock.—When a person desires to become a Stockholder in a Company, he usually makes application for a number of shares as follows:—

Application for Shares:

Toronto, Feb. 4, 1903.

The Directors of the Homestead Loan & Savings Company will please allot to me Ten shares in the Capital Stock of the said Company.

W. H. Cooper.

At a meeting of the Directors of the Company, this application would be considered, and if Mr, Cooper is a desirable person to become a shareholder, the Directors, by a by-law, will set apart ten shares for him. He will then pay in a sum of money on them, being such sum as is agreed upon, and an instalment scrip will be issued to him similar to the following :—

Instalment Scrip.

No. 75. $50.

The Homestead Loan & Savings Company (Limited)—Instalment Scrip.

London, Feb. 4, 1903.

Received from W. H. Cooper the sum of $50, being for first call of ten per cent. on Ten shares in the Capital Stock of this Company, said shares being Nos. 72 to 81 inclusive.

W. Roy, *President.* (seal) W. P. Telford, *Manager.*

When the stock is fully paid up, or when all is collected on it that the Company deems desirable, a Stock Certificate is issued.

Form of Stock Certificate:

No. 45. $500.

The Homestead Loan & Savings Company (Limited)—Stock Certificate.

This is to certify that W. H. Cooper of London is the holder of Ten shares in the Capital Stock of this Company, fully paid up, in the sum of $500., said shares being numbered 72 to 81 inclusive, and are transferable on the books of the Company by him or his attorney duly constituted. Dated at London this 4th day of Feb., 1903.

W. Roy, *President.* [SEAL] W. P. Telford, *Manager.*

2. **The Stock Book.**—The book first in importance in a Stock Company, is called the "Stock Book," or "Stock Subscription Book." It is the basis of the Company's organization. It is the subscription list, to which each person becoming a shareholder, signs his name, and binds himself to pay up his stock, and be bound by the rules and by-laws that may be made from time to time, for the government and management of the concern. From it the liabilities of the shareholder are determined in case of insolvency of the company.

Form of Stock Book:

THE HOMESTEAD LOAN & SAVINGS COMPANY (Limited.)

Incorporated under the Ontario Joint Stock Company's Letters Patent Act.

Capital $500.000, Divided into 10,000 Shares of $50 each.

We, the undersigned, do hereby severally subscribe for and agree to take the number of shares in the Capital Stock of the Homestead Loan & Savings Co. (limited,) set opposite our respective names and seals, as hereafter and hereunder written, each share being of the amount of $50; and we do covenant and agree each with the other, to pay the amount so subscribed as the same may be called in by the Directors of the Company; and we do further covenant and agree to abide by and observe the provisions of the Letters Patent Act of said incorporation, and the by-laws, rules and regulations of the said Company, made in pursuance of its charter and of the said Joint Stock Company Letters Patent Act.

Signature.	Seal.	Date.	Residence.	No. of Shares	Amt.	Witness.
John A. McDonald	X	Feb. 4, 1903.	Ottawa.	Twenty.	$1000.	C. Tupper.
Edward Blake. ..	X	Feb. 5, 1903.	Toronto.	Twenty.	$1000.	C. Tupper.
Jean Gibson. ...	X	Feb. 4, 1903.	Wroxeter. ..	Ten.	$500.	C. McGuire
Bessie Ferguson.	X	Feb. 4, 1903	Meaford.	Ten.	$500.	W. B. Robb
S. Dorland.....	X	May 1, 1903.	Meaford.	Fifteen.	$750.	W. Clegg.
Geo. Davy.....	X	May 15, 1903.	Whitby.	Ten.	$500.	H. Roper.

3. Signature by Attorney.—In case a Shareholder cannot go to the place where the Stock Book is, he can empower another to sign for him, by granting a Power of Attorney under Seal to the person he wishes to sign for him. The signature would be made—

OLIVER TWIST,

Per his Attorney DAVID COPPERFIELD.

Form of Power of Attorney to subscribe for Stock :

KNOW all men by these presents that I, Oliver Twist, of the City of Guelph, County of Wellington and Province of Ontario, gentleman, do nominate, constitute and appoint David Copperfield, of the City of Ottawa, in the said Province of Ontario, broker, my true and lawful attorney for me, in my name and on my behalf, to subscribe for Twenty shares of Fifty Dollars each in the Capital Stock of the Homestead Loan & Savings Company (Limited), and to do all other acts necessary for the proper carrying out of the same, and I hereby ratify and confirm all the acts of my attorney hereby appointed in reference to the same.

In witness whereof I have set my hand and seal this 5th day of March, 1903.

Witness
NICHOLAS NICKLEBY. } OLIVER TWIST. (L. S.)

The signature of the witness to the Power of Attorney may be proved by an affidavit similar to the affidavit of the witness in a Deed, Mortgage or Agreement for Sale of Land.

4. Transfer of Stock.—Shares in the Capital of a Company are personal property, transferable from one to another at pleasure; subject, however, to the approval of the Directors of the Company. The retiring stockholder must surrender his Stock Certificate, and sign a certificate or short form of Power of Attorney, either on the back of a Stock Certificate, or on an accompanying paper, authorizing the transfer of his shares.

W. H. Cooper is the holder of the stock in the foregoing Stock Certificate on page 183. If he desired to sell it to Robert Watson, he would write out and sign a Certificate like the one subjoined. It will be noticed that these transfers are always completed by sanction of the Directors of the Company, otherwise persons might get into the Company who are not responsible, financially, for the payment of their stock, or who were repugnant to the officers and stockholders of the Company, and whose desire in getting such shares might be to subvert or ruin the undertaking of the Company, or play into the hands of rival institutions. Stock on which there are unpaid calls cannot be transferred. Transfers of fully paid-up shares are almost always sanctioned by the Directors.

Form of Transfer Certificate:

BE it known that I, Wm. Henry Cooper, of the town of Orangeville, County of Dufferin, farmer, the holder of Ten shares in the Capital Stock of the Homestead Loan & Savings Company, numbering 72 to 81 inclusive, represented by the within Certificate, do hereby irrevocably nominate, constitute and appoint Henry Baker, of the town of Barrie, my true and lawful attorney, to transfer the said Ten Shares of Stock to Robert Watson, of the city of Corbetton, hereby ratifying all that my attorney shall do for the proper carrying out of the said transfer.

Signed, sealed and witnessed this 30th day of June, A.D. 1903.

Witness
JOHN W. SMITH. } W. H. COOPER (L.S.)

CORBETTON, June 30, 1903.

I, Robert Watson, of the city of Corbetton, do hereby accept the above transfer of shares.

Witness
JOHN W. SMITH. } ROBERT WATSON.

5. Dividends.—The profits of a Company are divided among the stockholders according to their interest in the Capital Stock—usually a certain per cent. on the paid up stock.

All such Dividends must be paid out of profits, and not out of capital; nor in such a way as to impair the capital of the Company. Any officer paying a dividend out of the capital, is personally responsible for the amount of such Dividend, in case the company goes into liquidation.

6. Cancellation of Stock.—The Cancellation of Stock is the taking of it back from a stockholder by the company.

(1) In case he will not pay up his calls, nor abide by and obey the rules, by-laws, etc., of the company.

(2) The Capital of the company has been impaired by losses, and the shareholders desire to put back the amount of such impairment into the company, and sell it to new stockholders, and so leave the part they retained fully paid up and unimpaired. Example:—The Ontario Bank cancelled one-third of its capital stock in 1896. A shareholder holding a number of shares, surrendered every third share. A shareholder holding one share had it reduced to two-thirds of a share.

7. Dissolution.—A company may be dissolved in several ways:—

(1) By expiration of Charter. Example: The Canadian Banks are incorporated for 20 years from May 1st 1891. On May 1st, 1911, all the Banks will be liquidated, unless the Charters are renewed.

(2) By Completion of the work. Example: Suppose a company is charteted to build 40 miles of the Crow's Nest Pass Railway. When that work is finished, the company would be Dissolved.

(3) By forfeiture of Charter. A company may forfeit its charter by failure to use it within two years of the time it was granted, called "Non-user;" and by exceeding the rights and privileges granted in the charter, called "Misuser." These cases are settled in Court, or by Government.

(4) By voluntary surrender of Charter. A company may voluntarily give up the charter granted them by the Government. When this is accepted by the Government, it is dissolved

(5) By Act of Parliament. A parliament that granted powers, may revoke these powers. This is sometimes the case with charters granted to public corporations, such as towns, cities, etc.

(6) By General Act. When a stock company becomes insolvent, it goes into liquidation under the "Joint Stock Companies' Winding-Up Act." A Receiver is appointed, whose duty it shall be to settle up the affairs of the company. He shall not, however, enter into new undertakings; only close-up old business.

8. Liabilities of Companies.—There is an old saying, that a corporation has "no soul to be saved, no body to be kicked, nor any personality to be imprisoned." Hence the punishment inflicted on a corporation will not be of a criminal nature. It cannot be punished by confinement. It may be—

(1) By imposition of a fine;
(2) By assessment of damages.

It is punishable by fine for misappropriation of property, etc., and for negligence, failure of performance, etc.; by assessment of damages, just the same way as an ordinary person. The property of the corporation is liable for taxation just the same as that held by private parties.

CHAPTER 46.

GUARANTEE AND SURETYSHIP.

1. **Definition.**—Guaranty or Suretyship is a promise to a person to answer for the payment of a debt, or the performance of a duty, by another person in case he should fail to perform his duty; or it is a contract whereby one person agrees to answer for the debt, default, or miscarriage (failure of full performance) of another.

Under the term "debts," we include all ordinary debts, on note or book account, due bill, etc., in the ordinary course of trade or business.

Under the term "default," we include all forms of bonds, whereby one person, a number of persons, or a Company, agrees in a bond to make good any loss through the dishonesty of an employee. A bond of this kind guaranteeing the honesty of a clerk, book-keeper or other employee, is usually called a "fidelity bond."

Under the term "miscarriage," we include all such contracts, where one person agrees and binds himself in a certain sum to assure another person that a third person will complete a work by a certain date, or in a certain manner.

The failure to complete a contract in the time or in the manner agreed upon is termed "miscarriage."

2. **Statute of Frauds.**—It will be noticed that one of the sections in the Statute of Frauds, (page 29), imposes a restriction on contracts of guarantee, that is, that they must be in writing, signed by the party chargeable therewith, hence a contract of guarantee made orally is legally of no use. (See R. S. O. Cap. 123, as to written promises).

3. The Parties.—It will be noticed that there are at least three parties concerned in a contract of guarantee—

(1) The Debtor, sometimes called the principal debtor;

(2) The Creditor;

(3) The Guarantor, sometimes known as the surety.

The principal contract is made between the debtor and creditor; and an additional contract between the guarantor and the creditor.

4. Discrimination of Guarantee.—For example, suppose Smith goes with Wilson into Brown's store, and says to Brown: "Give Mr. Wilson all the goods he wants up to sixty dollars. I will guarantee him all right. If he does not pay for them, I will." This would be legally void, because spoken. If written and signed by Smith, he would be required to pay for the goods, in case Wilson failed to pay for them.

Another example, very similar, requires a nice discrimination. If Mr. Smith had said: "Give Mr. Wilson what goods he desires, not exceeding sixty dollars, *and charge them to my account.* If he does not pay for them, I will." The authority to charge them to Smith's account changes him from *surety* to *principal debtor.* It would not be necessary to have the last example in writing, as Smith would not be answering for another's debt, but for his own debt, charged to him by his own authority. The goods were sold to Smith, but delivered to Wilson.

5. The Consideration.—Guarantee is a contract; and, like all other contracts, requires a consideration to support it, and such consideration should be expressed;

(1) When the guarantee is a collateral contract, the consideration in the principal contract is the consideration for the collateral contract of guarantee, and it should be so stated.

(2) The consideration for the contract of guarantee is often a nominal sum of money, such as one dollar.

(3) Contracts of guarantee are often made with consideration acknowledged by some such words as "value received"

6. Extent of Contract.—The terms of a contract determines the liabilities of the parties. The sum named in the contract is the greatest sum the guarantor is liable for. If the amount of the debt, default or miscarriage of the person guaranteed is less than the specified amount, the liability would be limited by the extent of the debt. For example—

A has his house insured for $1000; the insurance is one form of guarantee. If the house were worth $3000, no more than $1000 could be claimed if it

were completely destroyed. If, however, it were only damaged to the extent of $200, no more than $200 could be collected from the Company.

7. **Guarantee of Payment.**—The contract of the endorser of negotiable paper has been fully discussed under "Negotiable Paper." The guarantee of an endorser is for a limited time. The following are common forms of guarantee on negotiable paper, placed on them, to avoid the necessity of protesting:

Form 1. *Nominal Consideration—*

In consideration of One Dollar, I hereby guarantee payment of the within note, and waive Protest and Notice of Protest.

J. W. SMITHSON.

Form 2. *Acknowledged Consideration—*

For value received, I hereby guarantee payment of the within note, and waive Protest. J. W. SMITHSON.

It is proper to mention that notes, etc., are frequently guaranteed without the consideration being mentioned, a proceeding that is, to say the least, slipshod and unsatisfactory.

8. **Guarantee of Collection** differs very little in form from a guarantee of payment, but it is widely different in its effect.

Form—

For value received I hereby guarantee the collection of the within note. J. W. SMITHSON.

(1) When the form of guarantee of payment is used, the grantor is liable as soon as there is a default of payment; that is, if the obligation is not paid *when due.*

(2) In the guarantee of *collection*, the grantor is not liable until a process of law has been had, and the attempt has failed. The *inability to collect* must be proved.

9. **Guarantee of Fidelity**, sometimes called "Guarantee Insurance," is a very common form of guarantee. One or more persons, or a Company, guarantees the honesty and fidelity of a clerk, book-keeper or other employee.

The following is an example:—

Form of Fidelity Bond:—

KNOW ALL MEN BY THESE PRESENTS, that we, Robert A. Kells, of the Town of Listowel, in the County of Perth, Province of Ontario, book-keeper; James Grieves of the Township of Elma, in the said County, farmer, and

George Fallis, of the Township of Wallace, in the said County of Perth, farmer,

Are held and firmly bound to the Homestead Loan & Savings Company, (Limited), hereinafter called the Company, in the sum of Two Hundred Dollars, to pay to the said Homestead Loan & Savings Company (Limited), and their assigns, for which payment well and truly to be made, we bind ourselves, and every of us, and every two of us, and every of our heirs, executors and administrators, and the heirs, executors and administrators of every two of us jointly, and severally, by these presents, sealed with our respective seals.

Dated this ninth day of May, A.D. one thousand nine hundred and three.

Whereas the said Company have agreed to take the said Robert A. Kells into their service as clerk, or to act in any such other capacity for the Company as John G. Hay, of the said Town of Listowel, Manager of the said Company, or the Board of Directors of the said Company, may from time to time require or appoint, or as may be from time to time agreed upon with the said Robert A. Kells, upon the said Robert A. Kells and the said James Grieves and George Fallis as sureties for him, entering into the above-written Bond of Obligation for the fidelity of the said Robert A. Kells while in such employment as aforesaid;

And whereas it is intended and agreed that this security shall be in force during the whole of the time during which the said Robert A. Kells shall be in the service of or employed by the said Company, in such capacity or in any other capacity.

Now the condition of the above-written Bond or Obligation is such, that if the said Robert A. Kells shall, at all times hereafter so long as he shall be in the service or employment of the said Company, as clerk, or in any other capacity, faithfully, honestly and diligently perform and discharge the said service and all the duties which may devolve upon him the said Robert A. Kells as such clerk or otherwise as aforesaid, and shall, whenever required, duly account to the said John G. Hay, or other person or persons for the time being acting as Manager of the said Company, or to the said Board of Directors of the said Company, for all moneys, goods and property whatsoever for or with which the said Robert A. Kells may be in anywise accountable or chargeable to or by him or them as such clerk or otherwise as aforesaid, and shall, whenever required, duly pay or deliver all such moneys, goods and property to him or them; or in case the said Robert A. Kells, James Grieves or George Fallis or any of them, their or any of them, their or any of their heirs, executors or administrators shall, when required, make satisfaction to the said John G. Hay or such other person or persons for the time acting as Manager of the said Company, or the Board of Directors of the said Company, for all such moneys, goods or property which may be lost, misplaced or unlawfully disposed of by the said Robert A. Kells, or shall not be duly accounted for or paid or delivered as aforesaid, and shall keep the said John G. Hay, or such other person or persons aforesaid, and the said Company, indemnified against all losses, damages and expenses whatsoever by reason or in consequence of any such act or default of the said Robert A. Kells:

And so that any forgiveness or forbearance on the part of the said John G. Hay, or the person or persons aforesaid or the said Company towards

the said Robert A. Kells in respect of his failure or neglect to perform such services or duties, or make such payments as aforesaid, shall not in any way release or exonerate the said James Grieves or George Fallis, or either of them, their or either of their respective heirs, executors or administrators, in respect of their or his liability under the above-written Bond; and so also that the said James Grieves or George Fallis, or their respective heirs, executors or administrators, shall not separately or individually be liable to pay more than One Thousand Dollars each by virtue of the above written Bond;

Then the above-written Bond or Obligation shall be void and of no effect, or otherwise shall be and remain in full force and virtue.

Signed, Sealed and Delivered	Robert A. Kells,	(L. S.)
In the presence of	Jas. Grieves,	(L. S.)
Robert McMillan.	Geo. Fallis,	(L. S.)

10. A Continuing Guarantee is not an uncommon form of contract. The grantor becomes security for several successive acts.

Form—

In consideration of One Dollar, I hereby guarantee the payment of all goods purchased during the year 1902 by A. G. McKay, of Sydenham, from Alfred Frost, of Meaford, said purchases not to exceed in the aggregate Seven Thousand Five Hundred Dollars.

Jan. 1, 1902. W. J. Creighton.

This guarantee might be exhausted by one purchase of the entire amount, or by numerous purchases; or might only be partially exhausted during the year of its currency.

11. Guarantor's Rights.—The Guarantor, or Surety, has rights against both the debtor and the creditor, From the creditor he has a right—

(1) To receive notice of default within reasonable time after it is known to a debtor.

(2) To receive from the creditor all his rights against the debtor when he has made good the default, so that he (the guarantor) can go on and recover.

(3) To receive from the creditor all property pledged to the creditor by the debtor for the payment of such debt, and any other property of the debtor that the creditor has.

From the debtor he has a right to recover, if he can, the entire amount of the default made good by him, together with all costs and expenses connected therewith that he has paid; in a word, to be placed in the Creditor's position as to the Debtor.

12. Creditor's Rights.—The creditor has no right against the surety until default has been made by the debtor; and even then he may not have

such rights until some condition has been fulfilled. Usually he has a claim against both the principel debtor and the surety, after default, until the surety has paid him, then his rights shall pass to the surety.

13. Rights between Sureties.—Very often there are two or more persons that are co-sureties for the one debt. For example—the Fidelity Bond on page 189 is such a case. In case of default they would all contribute their proportion of the amount of the default, and would be entitled to a similar proportion of the effects of the defaulter: and in case one of them paid all, he could recover from his co-sureties their proportion of the loss.

There are many cases where there are two or more sureties for the same debt, and they are not co-sureties. If Z being the last name, were to add to his signature, "surety for above persons," he would only be liable in case of failure on the part of all that guaranteed before him. As an example of this we might cite that of endorsers. If the amonnt of a note were recovered from the last endorser, he could collect the entire amount he paid from any one that endorsed before him. He guaranteed on the strength of their guarantee. If however, the amount of the default were collected from the first endorser, he would not have any rights against those that endorsed after him, as when he endorsed, he did so absolutely, and not on the strength of those who would follow him.

The following is a classification of suretyship.

(1) Collateral { (*a*) Independent of each other ; (*b*) Joint and several ; (*c*) Jointly.

(2) Consecutive, that is, one after another, the second being only liable after the first is exhausted.

14. Discharge of Surety.—The sureties may be discharged from liability in various ways.

(1) *By Expiration of Time.* If a guarantee is given for a definite time—for example, the year 1902, in the "Continuing Guarantee," page 193, the surety is released at the end of the year from liability for purchases made afterwards, but not from the guarantee of any of the purchases made within the period.

(2) *By Notice by the Guarantor.* The surety may terminate a contract of guarantee by giving notice to the creditor that he will not be surety after a certain date. He is not released from liability for default before that date, but he is from any that may occur after that date.

(3) *By change of Agreement.*—When an agreement has been altered so as to change the liability, the surety is relieved. Suppose that Smith guarantees the fidelity of Adam Weir, as employee of J. H. Little, as salesman—if Mr. Little makes Mr. Weir his cashier, Mr. Smith would be relieved from liability in case of default, because the contract has been changed, and the liability increased.

(4) *Extension of time by the Creditors.*—If a creditor agrees to give a debtor an extension of time for the payment of a guaranteed debt, he releases the guarantor, unless the extension is given with his consent.

If X endorses Y's note, payable to *Z*; and *Z* gives Y a month's extension of time after the note matures, without consent of X, then X would be free.

(5) *Fraud* upon the surety in contracts of guarantee will make this class of contract voidable, just as any other contract tainted with fraud is voidable.

CHAPTER 47.

INSURANCE.

- DEFINITION.
- THE APPLICATION.
- THE POLICY.
- THE PREMIUM.
- THE RATE.
- VARIETIES OF INSURANCE.
- STOCK COMPANIES.
- MUTUAL COMPANIES.
- WHO MAY INSURE PROPERTY.
- THE TIME.

1. **Definition.**—Insurance is a contract by which one party engages, for a certain sum, to assume a certain risk which another would otherwise bear. For example—

John W. McCulloch owns a house, and an Insurance Company, for a certain sum, agrees to pay any loss that may happen to the house by fire. This business is almost all done by incorporated Companies. The Company that agrees to pay the loss is called the *Insurer*: and the person owning the property, the *Insured or Assured.* Untrue statements by the assured in the application will render the contract voidable.

2. **The Application.**—The person desiring insurance usually makes out an Application for it, addressed to the Company, giving full particulars about the person, premises or articles to be insured.

3. **The Policy** is the contract of the Company by which it agrees to make good the loss or damage that may happen to the insured person or property. It is based upon the statements made in the application for insurance.

4. **The Premium** is the amount paid for the Insurance, either by cash or note. It is usually a certain rate per cent. on the amount insured.

5. **The Rate** or price of Insurance is based upon the risk the Company assumes in the property: For example—The rate on a stone or brick house, separated from others, would be low, as there is very little risk of fire; perhaps 1 per cent. of the face of the Policy for three years. A frame planing mill would be high, as the risk is great; perhaps seven per cent. for each year.

6. **Varieties of Insurance.**—There are many kinds of Insurance. We may mention the following:—

(1) Fire Insurance,
(2) Marine Insurance,
(3) Life Insurance,
(4) Accident Insurance,
(5) Fidelity Insurance,
(6) Various minor kinds, such as Live Stock, Plate Glass, Hail, Burglary, Boiler Insurances, &c.

7. **Stock Companies** are such Joint Stock Companies as enter into the business for the purpose of making a profit. They do business on what is known as the *Cash principle*, that is, you pay them a certain sum down at the time of insurance, and no more during the currency of the Policy.

8. **Mutual Companies** are such as are formed by insurers among themselves. The idea is for all that enter such companies to pay losses and expenses, in proportion to the amount of their Insurance. Some mutual companies do part of their business on the cash principle. Such a company is called a "mixed company." In a purely mutual fire company, the company takes from each member, at the time of insurance, a *Premium Note or Undertaking*, that is, a promise to help to pay the losses up to a certain amount. A small sum is paid at the time. If more is required for the fires and expenses on the Policies than has been paid in as a deposit at the time of Insurance, then an assessment is made on all the Policies for the amount required. It is a case where all the members help to bear the loss of any one member who is so unfortunate to lose his property. This gives the members their Insurance at the net cost,—losses and working expenses.

9. **Who may Insure Property.**—The contract for Insurance is between two parties—the *owner* of the property, and the Company. A person must have some ownership in property, or he cannot insure it, as he would not be at any loss if it were destroyed. Property, therefore, must be insured

(1) By the owner for his own benefit;
(2) By the owner in favor of a mortgagee, in case either real estate or chattel property is mortgaged,

(3) By the mortgagee; in case the mortgagor fails to insure it, the mortgagee may insure it for his own benefit, and charge the premium to the mortgagor. The mortgagee has an interest in the property, and therefore has a right to have his interests protected.

In case the mortgagor insures the property, the Policy may be made out directly in the mortgagee's favor, or in favor of the mortgagor, and a clause written as follows, across the face of the Policy:—"*Loss, if any, payable to the Mortgagee, Thomas Brown, as his interest may appear.*"

10. The Time.—Fire insurance always begins to run at twelve o'clock, noon, and expires at twelve o'clock, noon,—usually for one, two or three years from the date when it began. On farm property and other isolated buildings, separated a reasonable distance from any hazardous property, the Policies usually run three years. On mercantile and manufacturing risks, generally one year. Short term Policies are also issued, such as three and six-month Policies. The rate is much higher for a short term than a long-term Policy—there is just as much cost for book-keeping, management, etc., as on a yearly Policy. If the rate on a yearly Policy were 90 cents, the half-yearly would not be less than 60 cents, and the three months rate would be 45 cents per $100.

CHAPTER 48.

FIRE INSURANCE.

- Fire Insurance.
- The Provisional Receipt.
- The Policy and Form of Policy.
- Statutory and other Conditions.
- Extra Risks.
- Changes on Buildings.
- Cancellation of Policies.
- Two or More Insurances.
- Re-insurance.
- Assignment of Policy.
- Renewal of Policy.
- Transfer from Place to Place.
- Misrepresentation.
- Negligence.
- Adjustment of Losses.

1. Fire Insurance is a contract whereby the Insurance Company agrees to make good to the owner of property any loss or damage to a certain amount occasioned by fire or lightning. This includes

(1) Actual destruction of the property, by fire or lightning;

(2) Damage to the property by smoke from fire;

(3) Damage to the property by the water used in quenching the fire;

(4) Damage to property occasioned by removal to save it from fire;

(5) Loss of property by theft, etc., when being removed to save it from fire.

2. **The Provisional Receipt**, or Interim Receipt, is the receipt given by the agent of the company to the person insuring.

(1) It acknowledges the receipt of the premium; and

(2) It grants Insurance on the property for thirty days, until the Directors of the company can have time to examine the application, accept it, and issue the Policy, or else reject the application and refund the premium.

Form of Provisional Receipt.

No. 24.570

NORWICH UNION FIRE INSURANCE SOCIETY.

Head Office: Norwich and London, England.
Chief Office for Canada: Toronto.

Parry Sound Agency, March 19, 1902.

Received from W. B. Robb the sum of Three Dollars, being a deposit for an Insurance against Fire for $300.00, subject to the Society's printed Conditions, on Household Furniture, in house on lot 7, Patterson street, for which [if approved of, on further particulars being received], a Policy will be issued in terms of Assured's Proposal of March 19, 1902. This protection not to extend beyond Thirty Days from the date hereof, and previous to the issue of a Policy may be cancelled by notice from the Agent, and a proportionate part of the premium [if any is due], returned to the Assured.

Premium @1% $3.00 R. CHRISTIE, Agent.

Unless specially allowed by the Office in writing hereon, the use is strictly prohibited, of any Steam Engine, Mill-work, Apparatus for producing heat; as also the storage of any Hazardous Goods; and the Proposer must declare if there are any Hazardous Risks in or on the adjoining premises.

3. **The Policy** is the written obligation of the company, agreeing to pay the insured person a sum of money in case of loss of the insured property. Policies may be divided into three kinds:—

[1] *Closed*, or *Valued Policy*, where a certain definite property is insured for a fixed sum.

[2] *Floating Policy*, one that covers goods being manufactured, as they are moved about from one part of a factory to another.

[3] *An Open Policy*, is such as would be put on a warehouse when goods are constantly being received and given out. All goods coming in are entered in the Policy at the time they come in, and a slight premium paid on all goods entered.

Closed Policies may be sub-divided, according to the contract, into—

(1) *Specific Policies*, where particular articles are insured in particular places. In such a Policy as this, if a horse happened to be burned in the cow stable or in the barn, no insurance would be paid, because it was not burned in the horse stable.

(2) *A Blanket Policy* is one that insures the contents of a building as such, and makes a contract to pay the loss of the insured property, wherever it is destroyed.

Form of Policy :

No. 1,491,007. SUM INSURED, $300.00.

NORWICH UNION FIRE INSURANCE SOCIETY.

HON. G. W. ALLAN, President. T. C. PATTERSON, ESQ., Vice-President.

ALEXANDER DIXON, General Agent.

IN CONSIDERATION of the sum of Three Dollars, and of the representations, conditions and warranties hereinafter mentioned or referred to, the NORWICH UNION FIRE INSURANCE SOCIETY, of Norwich and London, England, hereby Insures in manner hereafter appearing William B. Robb, Esq., Parry Sound, Ont, (hereinafter called the "assured") against loss or damage by fire to the property hereinafter described (but subject to the conditions and stipulations contained in this Policy) to the amount of Three Hundred Dollars, namely : On Household Furniture, $300.00, all owned by the Assured, and contained in house on lot No. 7, Patterson street, Parry Sound, Ont. And it is hereby agreed and declared between the said Norwich Union Fire Insurance Society, (hereinafter called the "Society" or "Company") and the Assured, (subject nevertheless, to all the said conditions and stipulations) that if the property above described, or any part thereof, shall be destroyed or damaged by fire at any time between twelve o'clock at noon on the nineteenth day of March, 1902, and twelve o'clock noon of the nineteenth day of March, 1905, the Capital Stock, Funds and Property of the said Society shall, according to the Laws, Regulations and Provisions of the Society alone, be liable to pay or make good unto the Assured, his executors, administrators or assigns, all such immediate loss or damage, to an amount not exceeding in respect of each of the several matters above specified the sum set opposite thereto, or the interest of the Assured therein, and not exceeding in the whole the sum of Three Hundred Dollars, subject to the conditions and stipulations of Assurance printed on the back of this Policy.

In witness whereof, I, the undersigned General Agent, being duly authorized by the Directors of the said Society, have hereunto set my hand this Thirty-first day of March, 1902.

ALEXANDER DIXON, General Agent.

Countersigned, T. C. PATTERSON, Vice-President.

This Policy will not be valid unless countersigned by one of the Society's Local Board of Managers for Canada.

N. B.—For all future payments upon this Policy, printed receipts, bearing the Embossed Stamp of the Society, will be given.

4. Statutory and other Conditions.—In the foregoing form of Policy the contract only is given. There are always a number of conditions in the policy made necessary by law at the place where the business is done. There are also various stipulations and conditions that the Company make and print in red as part of their policy. It is not necessary to insert any of these here as they vary considerably in different places and in different companies.

5. Extra Risks.—Buildings are frequently insured during their construction. For a payment of a small extra premium, the company will take the extra risk caused by the mechanics, carpenters, etc., that are working on them. These are variously termed "Mechanic's Risks," "Carpenter's Risks," etc.

6. Changes on Buildings.—If insured buildings are to be changed, refitted, remodelled, etc, and mechanics are to be put at work on it:

(1) Give the Insurance Company notice before you begin, or your Policy will be void.

(2) Pay a small extra sum and secure a mechanic's risk on it.

7. Cancellation of Policies.—If a person disposes of the property insured, or for any other reason desires to discontinue his Policy, he may have the company cancel the Policy and return part of the Premium to him. The part of the money refunded is called the *unearned premium*, because the company has not earned it all by carrying the risk to the end of the term of contract. The amount retained by the company is called the *earned premium*. On a Policy cancelled at the request of the insured, the company would charge the short term rate, and refund the balance. If, however, the Insurance Company wished to cancel the Policy, the Company would refund a proportionate part of the premium. If the insurance had run half of its time half the premium would be returned.

8. Two or More Insurances on the same property, without consent of all the companies concerned, is *literally no insurance, as not one cent of insurance would be paid in case of loss.* If consent of all parties is obtained, the same property might be insured in a dozen different companies so long as the total sum of all the insurances together did not exceed the insurable value of the property. The insurable value of property is usually about two-thirds of the cash value.

9. Re-insurance.—Every company sets a limit as to the amount of risk it will carry on any one property. Suppose a company sets such a limit at $5,000, and they are offered a risk on a building of $12,000. They would

take the risk and immediately re-insure at least $7,000 with other companies, so that the loss from any one particular fire would not be so large as to cripple a company, either for the time being or permanently.

10. Assignment of Policy.—A Policy may be assigned from one person to another by writing across it such clause as the following:—

"For value received, I hereby assign, transfer and set over unto John Smith, all my right, title, and interest in the within policy.

Witness, (Signed) HENRY BROWN, [L.S.]
M. E. MCNAB.

I, John Smith, do hereby accept the transfer to me of the within Policy.

Witness, JOHN SMITH, [L.S.]
M. E. MCNAB.

The policy is then forwarded to the Head Office of the Company, together with a fee, and the consent of the Company obtained and the names changed in the books. Such assignment of policy is made—

(1) To the purchaser, when the property is sold;
(2) To the mortgagor, when property is mortgaged.

11. Renewal.—Insurance Companies frequently continue a Policy from year to year by simply giving a Renewal Receipt for the yearly Premium each year when it is paid. This continues the original contract between the company and the insured, with all its conditions, for another year or term. If the premises are changed to any great extent, or the buildings or businesses near it are changed so as to increase the risk, a new Policy would have to be issued. The following is a form of Renewal Receipt:—

No. 11,824.

NORWICH UNION FIRE INSURANCE SOCIETY.

Head Offices: Norwich and London, England.
Chief Office for Canada: Toronto.

Parry Sound Agency, March 19, 1902.

Policy No. 1,491,007.

Received of William B. Robb, Esq., the sum of Three Dollars, for the Renewal Premium on this Policy, from March 19, 1902, to March 19, 1905.

Amount Insured, $300.00 R. CHRISTIE,
Premium, 3.00 Agent.

When any alteration takes place in the property insured, or in the buildings in hich any insured property is contained; or if the nature of the risk be in other reects changed; if the property insured has been removed to other premises, or the terest of the Policy has been transferred, the same must be made known to the Ofe and allowed by endorsement on the Policy, and an additional premium, if requir-, be paid; otherwise the Policy will be void.

12. Transfer from One Place to Another.—If chattel property is moved from one building to another, the consent of the company must be obtained, and the property will be held insured in its new place. If the new place is more dangerous than the old place, an additional premium may have to be paid, besides a fee for the transfer.

13. Misrepresentation.—If the insured party makes any misrepresentations regarding the property, either in regard to the character of the property or the risk to which it is exposed, the Policy will be voidable, as it is tainted with fraud.

14. Negligence on the part of the person insuring property, or on the part of his servants, is just what he desires to provide against; hence, the company is called on to pay, even if there has been carelessness. If the insured wilfully sets fire to his own building, he gets no insurance; and is punishable for arson besides. If insured property is on fire, or in imminent danger from fire, the owner must do his best to save it, or his policy would be void.

15. Adjustment of Losses.—Generally the full amount of the loss is paid on the insured property, so long as that amount does not exceed the amount of the insurance. Some policies contain an "*average clause*," and under such, only such proportion of the loss is paid as the insurance bears to the value of the property. For example—

A insures his house, worth $1500, for $1000. If the policy contained an "average clause" and the property were damaged $600, only two-thirds of loss would be paid, as in this "average clause" Policy the company is supposed to carry two-thirds of the risk and the owner one-third: hence he would only get $400 for his $600 loss.

The profits on goods are not insured, unless specially provided for; nor is the loss or inconvenience resulting from the interruption of business by the fire made up by the Insurance Company. The loss of property only is dealt with.

In case of loss by fire, notice should be given the company immediately, and the company will send an Adjuster, or Agent, to inspect the loss. The value of the articles destroyed must be verified on oath, and false or fraudulent statements nullify the claim against the company. The company always reserves the right to pay the money for the loss, or have the article or building replaced or repaired, as they choose.

CHAPTER 49.

MARINE INSURANCE

- Definition.
- The Time.
- The Risk.
- Policies and Premium.
- The Amount.
- Insurance in Several Companies.
- Assignment of Insured Property.
- Abandonment,
- Lost or Not Lost.

1. **Definition.**—Marine Insurance is a contract made between the Insurance Company and the owner of a vessel or cargo of merchandise, whereby the company agrees to indemnify the owner for the whole or a certain portion of any loss or damage at sea, to vessel or cargo.

2. **The Time** for which such insurance is made, varies very much:—

(1) It might be for a year, or a month, or six months, or any specified time. This is the way in which vessels are usually insured.

(2) For a certain number of voyages between certain places. This class of Policy is frequently taken out by owners of vessels on the lakes, as the season of navigation only lasts a few months of the year.

(3) For one particular voyage. Vessels are sometimes insured in this way; and cargoes are almost always insured in this way, from the time they are taken abroad until they are safely delivered on the dock at their destination.

3. **The Risks.**—In Marine Insurance, the property is not only insured against loss by fire, but against losses from the extraordinary perils of the sea voyage. This does not include natural decay, breakage, or leakage of liquids, as they are ordinary losses. The risks assumed are against :—

(1) Loss or Damage by Fire, or the water used in putting out the fire, or the smoke, etc., from the fire.

(2) The Sea. Damage from water, etc., caused by rough or stormy passages.

(3) Piracy. There is very little risk from piracy now. There are some pirates (sea robbers) in existence, but the danger is slight.

(4) Theft. This includes theft by persons belonging to the ship, such as passengers, sailors, or by others.

(5) Capture, Arrest and Detention. This refers particularly to the taking of a vessel or cargo by the men-of-war of a nation at war with the nation the insured belongs to.

(6) Barratry. That is loss occasioned by any fraud or wrongful acts of captain or sailors, such as sailing out of port without papers, or without paying dues, engaging in smuggling, deserting or sinking the ship, etc.

(7) General Average. If a vessel or cargo are in danger, and goods, or parts of the ship, are thrown overboard or sacrificed to save other parts for the general good, then all the owners of the cargo and ship share the loss.

(8) Salvage is compensation made to those by whose exertions a ship or cargo has been saved from impending peril, or recovered after loss.

4. Policies and Premium,—The policies in Marine Insurance are either open or closed. The closed policy is sometimes called a valued policy, because the amount of the policy is determined at the time of issue. The open policy is such as is taken out for a season for goods being shipped. The insured notifies the Company of all shipments; they are entered on the policy, or in the Company's books and a premium is collected on all goods so insured. Such premium may be paid in cash or notes. The premium is said to be "earned" when the goods are safely deposited on the dock or in the warehouse, at the end of the voyage. If the shipper decides not to ship his goods after an insurance has been effected, he may get his insurance cancelled, if the voyage has not been begun. In such a case the premium is said to be "unearned," and is returned to the one who paid it.

5. The Amount.—All Marine Insurance policies contain an average clause, which provides for the payment, in case of loss, only in the proportion that the insurance bears to the value of the property. Thus if goods worth $800 were insured for $500, the Company would only pay five-eighths of the loss, it being held that the insured carried three-eighths of the risk himself. If the loss were $200, then the Company would only pay five-eighths of $200—or $125. It will be noticed that if the insurer wishes to get full value for the slightest or greatest loss that may occur, he must insure the goods for full value. He may also insure the estimated profits that may arise from the goods.

6. Insurance in Several Companies.—Goods may be insured in several companies, in either of two ways:—

(1) *Consecutively or Successively.* That is, one to come after the other. The second Company pays only the loss that remains after the first has paid to the full extent of its policy.

(2) *Concurrently.* That is the companies all take the risk proportionately to their policies. If A insures property worth $600 in Company M, for $300, and in Company N, for $200, it is evident that the owner A, carries

one-sixth of the risk himself ; that Company M, carries half the risk, and Company N carries one-third of the risk. If a loss of $240 happened, N would pay $80, and M $120, leaving $40 of a loss to the owner.

7. **Assignment of Insured Property.**—Goods are sometimes sold during the voyage, and transferred by endorsing the bill of lading. If the policy is payable specifically to the first owner, he could have the policy transferred to the purchaser. Many such policies are drawn payable "to whom it may concern," and may be transferred by delivery.

8. **Abandonment.**—Property may be entirely lost, or partially lost, or damaged. If the loss is less than half the value, the company pays the proportionate part of the insurance. If the loss is more than half the value, the insured may, if he wishes, abandon the property entirely—that is, turn it over to the insurance company and collect the full amount of the policy. The Company in such a case, may sell the remaining property for what it will bring. The insured need not abandon the property unless he wishes. He may keep the property and obtain payment for a proportionate part of the loss, under the ordinary average clause.

9. **Lost or Not Lost.**—This phrase occurs in policies where the insurance is effected when the ship is at sea, and it is not known whether the ship is safe or not. Though the ship is lost days and even weeks before, if unknown to the parties, the insurance is valid and binding.

CHAPTER 50.

LIFE INSURANCE.

- Definition.
- Insurable Interest.
- The Beneficiary.
- Fraud and Concealment.
- Conditons of Policy.
- The Indemnity.
- Accident Insurance.
- Notice of Death or Accident.
- Claims for Indemnity.

1. **Definition.**—Life insurance is a contract between two parties—the insurer (usually a company) and the insured. The contract, in consideration of the payment of an annual premium, provides for the payment of a certain sum at the death of the insured, or when he arrives at a certain age. The person to whom a Policy is payable is called a *beneficiary*. The companies that undertake life insurance are divided into two kinds :

(1) *Mutual*, where all the members contribute to the funds of the company, either by assessments on the death of members, or a fixed sum monthly or yearly, sufficient to pay death rates and expenses of management.

(2) *The Stock Company* system, where companies go into the business of life insurance for the purpose of making profits for their shareholders.

With regard to the time of payment, life insurance is divisible as follows:

(1) *Straight Life*, or whole life, where the payment is to be made at the death of the insured.

(2) *Endowment*, where the payment is to be made in a certain number of years—or at death, should it happen before the close of the endowment period.

With regard to the way in which the premium is paid, it is divided in manner following, viz :

(1) *Level Premium*, where the insured pays the same amount of premium every year.

(2) *Natural Premium*, where the insured pays a premium that is increased every year as he grows older; the risk of his demise, naturally being greater.

(3) *The Assessment System*, where each member contributes, say $1.00, on the death of a member, and so the claim is paid; or where regular monthly assessments are made, and the death claims and expenses are paid, and the balances invested to meet future losses.

The level premiums are also payable in a variety of ways, to suit different circumstances :

(1) *Annual Premium*, where a sum is paid every year during life;

(2) *Premium for a term of Years*, where the insured pays a certain [illegible] fixed number of years, and then pays no more. For example, [illegible] life policy is one where one payment is made each year for ten [illegible] the policy is paid up

(3) *Single Premium.* Where one large premium is paid down at the time of insurance, and no other premium is ever asked for, the policy is paid up in one premium.

2. Insurable Interest.—(1) The owner of an article is always a competent party to insure it ; therefore, a person may always insure his own life ; and, unlike fire or marine insurance, he may insure in as many companies as he pleases, without consent of the others, and for just as large a sum as he likes to pay a premium on.

(2) Any person who has a financial interest in the life of another, may insure that person's life. Of these we might mention the following :

(a) A creditor may insure the life of a debtor, because his death might leave the claim unpaid.

(b) A person may insure his partner's life.

(c) A husband may insure a wife's life, or a wife a husband's life; a father a son's or daughter's life; or a child a parent's life, because the removal of such a relative by death might be a very serious pecuniary loss.

(d) A young woman engaged to be married has an insurable interest in the life of the man who is to be her husband; and *vice versa*.

The conditions of good health exisiting at the time of the insurance need not continue, it being sufficient that these conditions existed when the contract was made. In the case of a marine or a fire insurance, a change the in conditions would prevent a continuance of the insurance.

3. The Beneficiary is the person to whom a policy is payable,—he may be either the insured person or any other person.

(1) When a person insures his life in his own favor, he may give his policies as collateral security for money he may borrow, by assigning them to his creditor.

(2) Where the policies are payable to the insured, he can dispose of his insurance by will, the same as an other property.

(3) When a person insures in his own favor, the policies may be taken by creditors in case of insolvency, the same as other assets.

(4) If a person insures in favor of another person, say a wife or child, the policy belongs to such wife or child, and cannot be touched by creditors in case of insolvency.

4. Fraud and Concealment.—The application of the person to the Company should be true in fact, and should state all the facts. Fraud in making such representations as are not true, or failure to furnish information that the company should know, will taint the contract with fraud and render it voidable.

In many policies now issued, there is a clause to the effect that no misstatement or concealment of fact will be operative against the insured after the policy has run over three years. In other words, the policy is said to be incontestable after three years, except as to age being incorrectly given.

5. Conditions of Policy.—Premiums are usually based on the risk carried, and persons in a hazardous occupation are charged a higher rate; and, under many policies, a journey on the sea or into the Southern States, would vitiate a policy for the time being. Persons who commit suicide vitiate their policy, as they kill themselves willingly. If, however, the suicide of

the insured is the result of temporary or permanent insanity, the suicide is not criminal, and, therefore does not vitiate the policy.

6. **The Indemnity** is the sum paid to the insured, or his heirs:
   (1) A fixed sum at his death, or at a certain period during life; or
   (2) A weekly, monthly or yearly indemnity or pension.

7. **Accident Insurance** insures a person against injury by accident of any kind. It does not insure against sickness, but provides for (1) the payment of a fixed sum if the insured is killed by accident or; (2) the payment of a certain sum weekly during illness that is the result of accident. In case of death afterwards resulting from such accident, any sums that have been paid weekly will be deducted from the total amount of the insurance. In some Companies, an accident policy provides for the payment of a fixed sum, if the accident disables the insured, or if he lose a limb.

8. **Notice of Death or Accident** should be given as soon after such event happens as possible. It must be within a reasonable time—the usage at the place, and the special circumstances of the case, will decide what is a reasonable time.

9. **Claims for Indemnity.**—If the insured under a policy die, it is necessary to give such proof to the insurance company as will show them:
   (1) That deceased was the person insured under a certain policy;
   (2) When he died, and from what disease.

CHAPTER 51

MASTER AND SERVANT

- Definition.
- Contract of the Employer.
- Contract of the Employee.
- Care.
- Skill.
- Diligence and Forethought.
- Lien of Servant
- Loss of Articles being Built or Repaired.
- Time of Employment.
- Discharge.
- Leaving.

1. **Definition.**—If one person agrees to do work for another for a consideration or recompense, we find, in that contract for services to be rendered the relation of Master and Servant. The Master is the employer; the Servant the employee. Contracts for personal services are of two kinds:—

(1) *Particular*—where the employee is hired to do some particular kind of work—say, build a boat, or draw plans for a house. The work is special, and the agreement calls for a certain amount of this work.

(2) *General*—where one person takes another into his employ, to do general work—example, a clerk, a carpenter, a baker, a farm laborer, or a domestic servant.

(N.B.—The greater part of the chapter on Principal and Agent will be applicable under the head of Master and Servent.

2. **The Contract of the Employer.**—In every contract for personal services, there is something to be done, and something to be paid for it. In every properly made contract there is an agreement in advance, regarding the compensation (the consideration), for the services; and in absence of any agreement, it is presumed that the person accepting services is prepared to pay for such services what they are usually worth. If there is no specific agreement to the contrary, it is implied that payment is to be made at the end of the time.

3. **The Contract of the Employee.**—It is necessary for the employee to do all that his agreement calls for; and *it is always implied that such services will be rendered and work performed honestly, and with proper care, skill, diligence and forethought.*

4. **Care** applies usually to those who have the property of others in their hands,—such as tradesmen, when articles are left with them for repair; and warehousemen, who receive property for storage. Care embraces not only the safe-keeping or custody of the articles, but the protection of them from robbery or theft; and in case of live animals that require food, water, etc., to give them such attention as the owner would give.

5. **Skill.**—Where a man is engaged in a trade or business it is presumed that his workmen or clerks have ordinary skill required for that particular trade or business. He is not expected to possess all possible skill, but is expected to possess ordinary skill in his trade or calling.

6. **Diligence and Forethought** apply particularly to the exercise of the mind in looking after articles placed in custody and getting them shipped when necessary; or, in case of work to be done, to do it at the proper time so nothing will waste or suffer from neglect. They are the opposite of neglect and carelessness.

7. Lien.—A person employed to do work for another, such as to repair an article or build a house, etc., has a right to keep the article until he is paid; in other words, he has a lien on the property for his pay. If a blacksmith repairs my carriage, he has a right to keep the carriage till I pay him for his work. A warehouseman may keep goods until freight, storage, and other charges are paid. If he lets the goods go, his lien is at an end. He cannot take the articles back, he only holds a personal debt against the owner.

8. Loss of Articles being Built, Repaired, etc.—(1) Suppose Brown hires Smith to build a boat for him, and he, (Brown) furnishes the materials—the work to be paid for when completed. If the boat were accidently destroyed by fire, Brown would lose his material and Smith his work, because Smith had agreed to complete a certain work, he may have a profit out of it besides wages, therefore he has the risk.

(2) If Brown had engaged Smith to work by the day on the boat, then the whole risk would fall on Brown. If the boat were destroyed, Brown would lose both materials and labor, because Smith did not promise any definite result or finished work. He could have no profit out of it save the pay for his ordinary day labor.

(3) Suppose Thompson agreed to build a carriage for Henderson and furnish all materials himself for a specified sum, say $100. If the carriage were destroyed any time before completion and delivery to Henderson, then the entire loss would happen to the builder, Mr. Thompson.

9. Time of Employment.—All contracts of hiring where all the services are not to be rendered within one year, should be in writing. Suppose X agrees on January 10th, 1902, to work for one year for Y, said year to begin on May 1, 1902. There should be some memorandum of the same in writing signed by the parties, because it is not to be performed within one year, which would end at January 10, 1903.

If I engage a man for a day, a week or a month, at the termination of this period I may discharge him or he may leave me without notice. At the end of the time there is no further contract; it is dissolved by lapse of time. If a person is hired for no particular time and he is paid so much a day, a week, a month or a year, he is entitled to notice from his employer before being discharged, and his employer is entitled to notice before the employee leaves him.

If paid by day—a day's notice.
If paid by week—a week's notice.
If by the month—a month's notice.
If paid by the year—three month's notice.

If there is good reason for discharge or leaving, such as careless work, etc., notice isnot required by either party.

If a person agrees to work, say three months, and works only two months he is not entitled to anything, because he does not fulfil his part of the contract. If it is the fault of the employer, he can collect wages for the full time.

10. Discharge.—A servant isexpected to serve his master honestly, checrfully and faithfully ; to enter upon his duties at the proper time ; to obey all lawful commands ; to be responsible for loss or damage occuring to his master's property on account of his negligence : therefore wilful disobedience and habitual neglect, absence without leave, refusal to perform work requested by the employer (unless such work is illegal) are good causes for discharge. If a servant is discharged for good and sufficient cause, he cannot claim wages previously earned and not due at the time of discharge.

11. Leaving.—The master is expected to give reasonable commands, and commands that are not illegal, and that are within the limits of the work the employee agreed to perform. If the master gives commands contrary to the foregoing, and endeavors to enforce such commands, the servant has just cause for leaving.

The employer is expected to furnish suitable tools, machines, etc., and such machines, engines, etc., should be reasonably protected so as not to subject the employee to unnecessary danger or accident. If the employer required the employee to work such dangerous machines after due notice of the danger, the employee has just cause for leaving ; and should any accident happen to the employee after his giving such notice the employer is responsible for such damage resulting from such unsafe machines. If, however, the servant accepts such risks voluntarily, he, and not the employer, is responsible for the accident.

For Ontario legislation respecting Masters, and Servants and Workmen, see R. S. O. Caps. 136, 140, and 208, and for Manitoba legislation see R. S. M. Cap. 95

CHAPTER 25

LANLORD AND TENANT.

1. **Definition.**—When the owner of real estate, in consideration of certain payments to be made to him, lends or hires this real estate to another, we have the relation of landlord and tenant subsisting between the parties. This relation exists in all such transactions, from the letting of a single room to the letting of factories, farms, railroads, etc. The amount paid to the owner for the use of such premises is usually called *Rent.*

2. **The Landlord.**—The owner of the property is called the *Landlord* or *Lessor.* The Landlord gives the Tenant full use of the premises, and unless otherwise agreed upon, has no more right on the premises than any other person. Usually there is a provision in the agreement that the landlord may enter and view the state of repair at stated periods. The landlord, unless otherwise agreed upon, is liable for all taxes, rates and assessments collectable from the premises; likewise all interest on mortgages, etc.

3. **The Tenant.**—The person who hires the property for his own use is called the *Tenant* or *Lessee.* He pays his rent and obtains full control of the premises. He exercises all the rights of an owner, for the time being. The Rent is the consideration or price of such powers and privileges. He is not liable, unless specially provided for in his contract, for the payment of

(1) Taxes, assessments, interest, etc.,

(2) For ordinary depreciation of the property by natural wear and tear, decay, etc.

(3) For loss of the property by fire, etc.

He is liable however for the following:—

(1) For the payment of rent agreed upon;

(2) For voluntary or permissive waste or destruction of the property;

(3) For performance of special provisions and agreements in his contract.

The tenant has a right

(1) To reasonable notice to quit from the landlord if his tenancy is for an unspecified time;

(2) To possess and enjoy all crops grown on the ground, and all that are on the ground if his lease is terminated;

(3) To necessary wood for fuel, if on a farm where there is timber standing, but not for wood to sell;

(4) To sublet the premises or part of them to others, unless his contract provides to the contrary.

4. **The Lease** is the name given to the contract between the landlord and tenant. If it is for a year or more, it should be in writing; if for three years or over, it must be in writing and under seal. If for more than seven years, the lease must be registered. When a lease for over seven years is registered, it gives the lessee a right to vote on financial questions the same as an owner

Leases should be made in duplicate, one copy for each person; and all the provisions for the agreement should be carefully written down and signed by the parties, to prevent litigation. The following is the ordinary form of lease, usually called a "Statutory Lease." It will do for either town or farm property. A lease may be made to commence from any day in the past or future, as well as from the date of the lease.

Form of Statutory Lease;

THIS INDENTURE, made the twentieth day of February, in the year of our Lord one thousand nine hundred and three, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF LEASES:

Between John Henry Jones, of the town of Barrie, County of Simcoe, and Province of Ontario, Butcher, the party of the First Part, and William McTavish, of the town of Barrie, aforesaid, Barber, the party of the Second Part.

WITNESSETH, that in consideration of the Rents, Covenants and Agreements hereinafter reserved and contained on the part of the said party of the Second part, his executors, administrators and assigns to be paid, observed and performed, the said party of the First Part hath demised and leased, and by these presents DOTH demise and LEASE unto the said party of the Second Part, his heirs, executors, administrators and assigns—

All that certain parcel or tract of land situate lying and being in the town of Barrie, in the County of Simcoe, and Province of Ontario, and being more particularly described as lot number Thirty-three, on the North side of Victoria street in the aforesaid town, and containing by admeasurement one-quarter of an acre, be the same more or less;

TO HAVE AND TO HOLD the said demised premises for and during the term of Five years, to be computed from the First day of March, one thousand nine hundred and three, and from thenceforth next ensuing and fully to be complete and ended, YIELDING AND PAYING therefor yearly and every year during the said term hereby granted, unto the said party of the First Part, his heirs, executors, administrators or assigns, the sum of One Hundred and Twenty Dollars of lawful money of Canada, payable on the following days and times, that is to say: Ten Dollars to be paid on the first day of each month, the first of such payments to become due and to be made on the First day of April next.

THAT the said party of the Second Part covenants with the said party of the First Part to pay rent, and to pay taxes, and to repair and, to keep up fences, and not to cut down timber: AND that the said party of the First Part may enter and view the state of repair; and that the said party of the Second Part will repair according to notice, and will not assign or sub-let without leave and that he will leave the premises in good repair, and will not carry on on said premises any business or occupation which may be offensive or annoying to the said party of the First Part, or his assigns; AND ALSO that if the term hereby granted shall be at any time seized or taken into execution or in attachment by any creditor of the said party of the Second Part, or if the said party of the Second Part shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the then current month's rent shall immediately become due and payable, and the said term shall immediately become forfeited and void, but the next current month's rent shall, nevertheless, be at once due and payable:

PROVISO for re-entry by the said party of the First Part on non-payment of rent, or non-performance of Covenants: THE said party of the First Part COVENANTS with the said party of the Second Part for quiet enjoyment.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals.

SIGNED, SEALED, AND DELIVERED In the presence of G. W. DONALD.	J. H. JONES.	[L.S.]
	WM. MCTAVISH.	[L.S.]

5. Farm Lease.—When a farm is leased by one person to another it is customary to make the agreement or lease very specific as to how the lessee is to manage the farm, so as to preserve it in, reasonably good condition. The following provisions may be inserted in the statutory lease, and it will be a very good form of farm lease.

[1] AND THAT the said Lessee will, during the said term, cultivate, till, manure and employ such part of said demised premises as is now, or shall hereafter be brought under cultivation, in a good, husband-like and proper manner. [2] AND will crop the same during the said term, by a regular rotation of crops, in a proper farmer-like manner, so as not to impoverish, depreciate or injure the soil of the said land. [3] AND will use his best and earnest endeavours to rid said land of all docks, red roots and Canadian thistles,

[4] AND will preserve all orchard and fruit trees, if any, on the said premises from waste, damage or destruction. [5] AND will spend, use, and employ, in a husband-like manner, upon the said premises all the straw and dung, which shall grow, arise, renew or be made thereupon. [6] AND will allow any incoming tenant to plow the said land after harvest in the last year of said term, and to have the use of stabling for two horses and bedroom for one man. [7] AND shall not nor will during the said term cut any standing timber or trees upon the said lands, except for rails or for buildings upon the said demised premises, or for firewood upon the premises ; and shall not allow any timber to be removed from off the premises. [8] AND ALSO shall and will, at the cost of the said Lessee, well and sufficiently repair and keep repaired, the erections and buildings, fences and gates erected or to be erected upon the said premises, the said Lessor finding or allowing on the said premises all rough timber for the same, or allowing the said Lessee to cut and fell so many timber trees upon the said premises as shall be requisite, and allowing the said Lessee the sum of 65c per 100, out of the said rent for new rails made into fences. [9] AND ALSO shall and will, at the expiration, or other sooner determination of this Lease, peaceably and quietly leave, surrender and yield up unto the said Lessor, his heirs or assigns, the said premises hereby demised, in such good and sufficient repair as aforesaid (reasonable use and wear thereof and damage by fire and tempest only excepted.)

6. Special Agreements.—If a lessee covenants to repair and to keep in repair, the demised premises during the term, he must, [unless the proviso, "damage from fire or tempest excepted," be added,] re-build them, if burned down or destroyed. He must also continue to pay his rent as if no fire or loss had happened. To overcome the latter difficulty and to relieve the lessee from such a hardship, in the majority of house, shop and factory leases, there is a provision, that in case of fire the rent, or part of it, will cease until the premises have been repaired or rebuilt, The following is a suitable clause :

AND it is hereby declared and agreed that in case the premises hereby demised or any part thereof shall at any time during the term hereby granted be burned down, or damaged by fire so as to render the same unfit for the purposes of said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the injury sustained, and all remedies for recovering the same, shall be suspended and abated, until the said premises shall have been rebuilt or made fit for the purposes of the said lessee

7. The Time.—A Lease may be given for any time (not exceeding ninety-nine years) according to agreement. Leases may be divided according to the terms for which they are granted ;

(1) *For a Definite Term*, such as a month, a year, a lifetime, etc.

(2) *For an Indefinite Term*, and the Lessee in such a case is called

a Tenant at Will, that is, the Lease may be terminated by either a Lessee or Lessor, whenever he will, by giving the other party reasonable notice of such intention.

A person may rent a house from another for a month or a year, or any other definite time, and just pick up his effects and leave, at the expiration of his term, without notice to the Landlord. If, however, he rents for a term first, and then wirhout any specific agreement, continues to occupy, the landlord may require notice equal in length to his first term or the payment of rent for that term. He can require the same time in a notice to quit from the landlord. If Smith rents a house from McIntyre for one, month and afterwards continues to occupy the premises without any further agreement, should Smith want to leave, McIntyre may ask for a month's notice or a month's rent; if McIntyre wants Smith to leave, Smith may ask for a month's notice.

Suppose Smith's month began on June 10th, it would continue until the end of July 9th. If the landlord, McIntyre, wants to give the month's notice he must give it on or before the 9th of the month. If he were to give it on the 10th, it would not be operative during the month, as Smith has entered upon it. Such notice would only count the same as if given any time as late as the 9th of the next month. There is no necessity for form of notice being inserted here, as an ordinary letter, stating the facts, may be handed to the person, or mailed in the Post Office to his address, registered. In case verbal notice is given, it should be given before witness.

7. **Rent—When Payable.**—Rent may be payable in any way agreeable between the parties. It may be payable in advance, or at the end of the term; or it may be split up into various portions, payable at different times during the term. A tenant might be a weekly tenant, with his rent payable weekly or monthly, as per agreement. He might be a yearly tenant with his rent payable monthly, quarterly, half-yearly, or once a year at either the beginning or end of the term. The tenant has the whole day on which the rent is due in which to pay it, and if it is not payable at a certain place, it is the duty of the tenant to search out the landloard and pay it to him. The tenant cannot be put to any trouble or expense for non-payment of rent until the next day after it is due.

8. **Distress for Rent** is the taking by the landlord or his bailiff without legal process—cattle, goods, or chattels to satisfy claims for rent—in cases where there is an actual demise at a fixed rental. No distress can be made the same day on which rent falls due—nor can it be made before sunrise nor

after sunset. The distress, as a rule, must be made on the premises where rent is due, except in the cases mentioned hereafter.

As a general rule, all cattle, goods, or chattels, (with certain exceptions) found on the demised premises, may be distrained, whether belonging to the tenant or a stranger. The person distraining cannot lawfully break open outer doors or windows to make a distress, but may do so to inner ones. After distress, the goods are impounded, and an inventory, valuation and notice of same made.

By R. S. O., chapter 143, sec. 27, goods exempt from execution are now exempt from distress for rent or taxes. By sec. 28, goods not the property of the tenant are exempt. By sec. 44, boarders'and lodgers' goods are protected.

The tenant may resist entry and seizure, and may re-take the goods from the bailiff until such time as the bailiff makes a list of the goods seized and delivers it to him. The goods are then said to be impounded.

Distress must be made within six months after the termination of the lease, and during continuance of landlord's title. If the landlord has sold the property, the new owner cannot distrain; he can only recover by a suit-at-law, like an ordinary debt. If there is no amount of rent agreed upon, the rent is said to be *undetermined*, and cannot be distrained for; it can only be collected as an ordinary debt.

Seizure of the tenant's goods cannot be made if they are removed to other premises, unless—

(1) The bailiff saw them being removed when he was coming to make a seizure; or,

(2) If the goods have been removed fradulently or clandestinely from the premises, to prevent the landlord from seizing for arrears of rent, then he may seize them in any place he may find them for thirty days after such removal.

If the goods of the tenant have been already seized for other debts, they cannot be seized again, but the landlord need not let them go until the rent is paid. He can hold them, but he cannot sell them.

Property of third parties (with exceptions above stated) can be seized if found on the premises; if in the use, employ, or occupation of the tenant. Example—a sewing machine or an organ, used by the family of the tenant, may be seized and sold for his rent.

10. Eviction means a turning out of the tenant, by the landlord—the depriving him of the property, after formal demand for rent and notice to quit. The landlord cannot simply drive him out, if he is unwilling to go. He must do it by an action-at-law for ejectment; or by obtaining an order from the County Judge or Bench of Magistrates. If tenant gives notice of his

intention to leave, and then remains over the term, the landlord can demand double rent.

11. Lodgers are subject to the same laws as ordinary lessees. Their privileges extend to the use of doors, door-bells, halls, and approaches and necessary out-buildings, etc.; and their effects are not subject to seizure by the owner or superior landlord. When the rooms are let furnished, it is presumed that they are reasonably fit for habitation when they are let. This does not apply to any unsanitary condition, unless there is specific agreement in reference to it. If the tenant suspects that there is anything wrong with the premises, he should see to them, and have them put in proper condition before taking possession.

12. Improvements, Fixtures, etc., put on premises by a tenant usually become the property of the landlord. Any additions fastened to the building with nails, usually become part of the building; but such as are attached by screws do not become the property of the landlord; and all such may be removed unless they leave the property in a worse condition than it was before occupation. Such additions might include (with many other articles) such as engines, boilers, machinery, counters, shelving, etc., etc.; such articles should be removed before the expiration of the lease.

13. Repairs.—The landlord is not usually supposed to make repairs to a property occupied bya tenant, except such as are the result of natural decay and wear. All breakages, etc., should be repaired by the tenant;- and he should leave the premises in as good candition as he got them, except the ordinary wear and tear resulting from the proper use of the premises.

14, Ground Rent.—It often happens that a person has some desirable property for building purposes, but does not desire to build for rental or for his own occupation. Such property is frequently leased for long terms, say 20 years. The lessee builds thereon and occupies or rents, paying the owner of the property only the ground rent. At the end of the term of the lease he may again rent for another term. If no sach agreement is made to continue, the owner of the property will have to pay the tenant *the agreed or arbitrated value* of all houses, buildings, etc., erected thereon.

CHAPTER 53.

BAILMENT.

1. **Definition.**—A Bailment is a delivery of goods or chattels by the owner to another, to be held for a certain purpose, and to be afterwards returned or disposed of according to contract. There are various classes of bailment. We will consider the following:

(1) *Deposits*, gratuitous and for hire. Where goods, property, money or valuables are left with another, to be cared for, either as a matter of friendship or for hire.

(2) *Commission*, where goods are in the hands of a consignee for sale on commission.

(3) *Loan for use*, where property is borrowed by a person that he may use it for his own benefit.

(4) *Pledge*, when property is left as security for a debt.

(5) *Hire*, where one person obtains the use of property from another and pays for such use.

2. **The Bailor**, is the person that owns the property, and places it in trust in the hands of another person.

3. **The Bailee**, is the person that is entrusted with the property of another.

4. **Degrees of Diligence or Care.**—There are three degrees of diligence or care required of the bailee in reference to the goods under his charge:—

(1) *Slight Diligence*, when the trust is entirely for the benefit of the owner. Example : I leave my coat in your charge, and do not pay you anything for your trouble—only slight care or diligence is required on your part. Slight diligence only requires the exercise of common prudence. The bailee, in this case, would only be chargeable for gross neglect.

(2) *Ordinary Diligence.*—When the bailment is made for the benefit of both parties, ordinary diligence on the part of the bailee is required, and he is liable in case of ordinary neglect. For example : X says to Y, I will lend you my horse for a month—you may have his work for his keep. It is a benefit to X to have the horse fed, and a benefit to Y to have the horse's work

(3) *Extraordinary Diligence*, is necessary on the part of the bailee when the bailment is entirely for his benefit, and slight negligence renders him liable. For example : A obtains from B the loan of his carriage. This loan is entirely for the benefit of A, and he would be required to exercise extraordinary care of it.

5. **Deposits Gratuitous.**—When goods are left with a person without compensation, the keeping is gratuitous. The acceptance of the property is a consideration for support of the contract. He may require the owner to take them away at any time. A tender of the goods to the owner frees him from further liability. He must, however, return the identical articles deposited, together with natural increase, or lessened by natural waste or consumption. Only slight diligence is required on the part of the bailee, who is usually called a depositary.

Deposits for Hire, require ordinary diligence on the part of the bailee—they are for the benefit of both. Examples : A leaving his horse with B, and paying for keeping and caring for him, would require ordinary diligence and care on the part of the depositary, such as an owner would give. The bailee should use him as much as is necessary to keep him in proper health. X leaves his money with a banker, Y, on deposit, the bailment is a benefit to X, as his money is cared for, and to the banker; Y, because he has the use of it.

6. **Finding Property.**—A person who finds property becomes a bailee or depositary gratuitously, if he takes the property into his custody. He need not take the property unless he likes. Usually, he is not legally entitled to compensation for keeping the property, and must deliver it to the owner when requested. There is one exception : If live stock strays on to a person's premises, and requires food, etc., that person may take the animal under his care and feed it. He must immediately advertise it ; and after a certain time has elapsed and no claim is made by the owner, he must sell it

by public auction, retain the amount of his expenses, and deposit the remainder with a public officer [usually the town or township treasurer] in trust for the owner.

7. **Commission.**—Persons entrusted with goods for sale on account of others, are called Commission Merchants. They have possession of the goods, but do not own them. They must exercise ordinary diligence in caring for them. They have a lien on the goods for all charges paid or incurred on account of them, such as freight, storage, advertising; and for commission, which is really the pay for selling the goods.

8. **Loans for Use** are for the exclusive benefit of the borrower, as he does not pay anything for the use of the article. The loan is gratuitous, and the borrower must exercise great diligence in the care of it, and return it in as good condition as he got it. If he breaks or destroys it in any way, he must repair it, and make it as good as it was when he borrowed it. The borrower is liable for all expenses incurred in the use of the article borrowed. If A borrows B's horse, he must pay for all feed, attention, shoeing, etc., required by the horse, and the expenses of curing, if the horse is taken sick. The borrower has no right to lend it again to a third party. The lender may request the borrower to return the article at any time. When a person borrows an article to be consumed, such as grain, flour, etc., it is called *Mutuum*. The proper quantity of the same article should be returned, and the quality of the article returned should equal that borrowed.

9. **The Pledge of Property** is the bailment of chattels as collateral security for the payment of debt. It must be taken for some particular debt, and cannot be held for any other debt, unless by agreement. There are three elements in the pledge:—

[1] A debt;

[2] An actual or constructive delivery to the creditor of the goods pledged;

[3] An agreement that the goods are to stand as security for the debt.

10. **Collateral Security**, means "along with", that is, collateral security is given to support a promise, either verbal, written, or by negotiable paper. For example: A bank makes a loan to a grain buyer, and takes a warehouse receipt from him by endorsement, as security for the loan. The grain already in store is constructively delivered to the banker. In case the grain is sold to be delivered in a distant city, the banker gives orders to ship it, and takes a bill of lading instead of the warehouse receipt. The banker sends the bill

of lading to his corresponding banker, where the grain is to be delivered, with instructions to have the draft that the seller of the grain draws in his favor paid, before the bill of lading is delivered to the purchaser. The price of the grain is then remitted to the banker, to be placed to the credit of the borrower on his loan. All kinds of property are pledged as collateral security by leaving same with the creditor.

11. Creditors' Rights.—The creditor may keep the property pledged to him, until the debt is paid; and if the debt is not paid when due, he may sell the property. From the proceeds of the sale he may reimburse himself for the amount of the loan, the interest, and the expenses. If there is any surplus, it must be returned to the debtor. The property, however, must not be sold without notice to the owner; and the demand must first be made for the payment of the debt.

12. Debtors' Rights.—The debtor has a right to the property until it is sold, if he pays the loan with interest and expenses. He may redeem it at any time before it is sold.

13. Pawnbrokers are persons who make a business of lending small sums, and taking clothes, jewelry, furniture, and other portable articles in security. They are required to put out a sign of three balls at their place of business. The signification of three balls is said to be, that the person who thus pledges his property, has two chances to one against him, of getting the property back again. See R.S.O., chapter 155.

14. Chattel Mortgages. When a person pledging his property for the payment of a loan, desires to retain possession of it, but to transfer the ownership to the creditor conditionally, he gives him a chattel mortgage, [see chapter 30].

15. Bailment for Hire—The Hirer's Duty.—When one person loans property to another for hire, it is for the benefit of both parties:—

[1] The borrower must exercise ordinary care of the property

[2] He must use it only as agreed upon. If he uses it otherwise, he is liable for any damage resulting to it and for additional hire.

[3] He must pay the hire in advance, if requested to.

[4] He is entitled to exclusive possession during the time agreed upon, and cannot be interfered with by the owner in such lawful use as was agreed upon.

[5] He is not responsible for the loss or destruction of the article when using as agreed upon, unless such were occasioned by his negligence or improper use.

16. Bailment for Hire—The Bailor's Duty is to deliver the property to the hirer as agreed upon; to allow him the full use of the property for the

purposes agreed upon; and not to disturb him in his lawful use of it. The bailor may terminate the bailment if the hirer is using it improperly, or for other purposes than those agreed upon.

17. Other Divisions of Bailment are taken up specially in chapters on landlord and tenant, master and servant, the host and guest, the carriage of freight, and the carriage of passengers, etc.

CHAPTER 54

SHIPPING.

- DEFINITION.
- THE SHIP OWNER.
- CONTROL OF VESSELS.
- THE OWNER OF GOODS CARRIED.
- BILL OF LADING AND FORM OF SAME.
- TRANSFER OF BILL OF LADING.
- THE CHARTER OF A VESSEL.
- CHARTER PARTY WITH FORM OF SAME.
- DEMURRAGE.
- PRIMAGE.
- TOWAGE.
- SALVAGE.
- LOSS OR INJURY.
- GENERAL AVERAGE.
- ADJUSTMENT OF LOSS OR JETTISONED PROPERTY.
- MARITIME LOANS.

1. Definition.—All kinds of ships, vessels, steamers or sailing vessels, tow barges, etc., make up the shipping of a country. It matters not how small or how large the ships are, so long as they carry either freight or passengers, they belong to the shipping. In contracts for shipping, there are three classes of parties, viz :—

(1) The owner of a ship;
(2) The owners of freight, etc., carried by them;
(3) Charterers or hirers of vessels.

2. The Ship Owner.—Every ship is owned by one or more persons. All British vessels must be owned by British subjects, either born such or naturalized. Every vessel, so far as ownership is concerned, is divided into ***sixty-four shares***, and each part owner, if there are more than one, must hold a certain number of these equal portions, called shares. If W. H. Smith holds half interest in the steamer Campana, he owns thirty two shares. The shares will vary in value, according to the value of the ship. A ship is

a personal property, and is sold or transferred by Bill of Sale. It is mortgaged somewhat similarly to chattel property.

Every ship must be registered in the Custom House of some port, and the name of the port of registration must always be painted on the vessel in proximity to her name. Example: "The Alberta of Montreal." "The Alice Baird of Kincardine." The certificate of registration will contain the names of the owners, and the shares held by each. All transfers of shares in, or mortgages on ships, should be registered in the Custom House.

3. **Control of Vessels.**—The control of vessels is entrusted to the Collectors of Customs. Every vessel coming into port must report to the Collector, and obtain a discharge before leaving. The Collector has power to seize and tie up any vessel:

(1) For breach of laws or special orders;
(2) For trading at other places than those allowed her;
(3) On account of being unseaworthy.

4. **The Owner of Goods Carried,** is the person who agrees to pay the vessel owner a certain sum as a consideration for the transport of goods, etc., from one place to another.

5. **Bill of Lading.**—The owners of ships usually carry on the business of shipping in general, and carry freight, etc., for all comers, and are therefore called Common Carriers. The agreement between the owner of the vessel and the owner of the goods to be carried, is called a Bill of Lading:

(1) It acknowledges the receipt of the property in good condition; and
(2) It is the agreement for the transport of the goods from one port to another for a certain consideration, usually called freight.

The Bill of Lading is usually made out in triplicate [set of three,] and signed by the master of the ship: one for the shipper; one for the person the goods are sent to; the third is retained by the vessel. The person sending the goods is known as the "consignor" or "shipper." The person that they are sent to is called the "consignee."

6. **Transfer of Bill of Lading.**—The Bill of lading is a receipt for the goods, that calls for their delivery at a certain port, in good condition. It is a negotiable instrument, and may be transferred from one person to another. The transfer of the Bill of Lading by endorsement, transfers the goods that it represents. When the Bill of Lading is given instead of the goods it calls for, there is said to be a "constructive delivery" of the goods.

Form of Bill of Lading.

GEORGIAN BAY TRANSPORTATION COMPANY THROUGH LINE.

No. 507. CHICAGO AGENCY, July 28, 1902.

SHIPPED, in good order and condition, by D. B. Linstead, as agent and forwarder, for account and at the risk of whom it may concern, on board the Propellor "Canada," whereof John McGiffen is Master for the present voyage now in the Port of Chicago, and bound for Parry Sound, the following articles as herein marked and described, to be delivered in good order and condition as addressed in the margin, or to his or their assigns or assignees (dangers of navigation and collision, explosion of boilers, and fire afloat excepted), upon paying the freight and charges as noted below. All deficiency in the cargo to be paid for by the carrier and deducted from the freight, and any excess in the cargo to be paid for to the carrier by the consignee. In case grain becomes heated while in transit, the carrier shall deliver his entire cargo, and pay only for deficiency exceeding five bushels for each 1000 bushels. And it is also expressly agreed that in case of loss or damage of any of the goods named in this Bill of Lading, for which any carrier under the same may be liable, that they shall have the benefit of any insurance by or for account of the owners of said goods.

IN WITNESS WHEREOF, the said Master or Agent of said vessel hath affirmed to three Bills of this tenor and date, one of which being accomplished the others to stand void.

Address	No.	Description of goods.	Weight.	Rate.	Amount.
Wm. Cuthbert.	6	Bales of Broom Corn.	1650	30c.	$4 95.

D. B. LINSTED. *Agent.*

7. **The Charterer of a Vessel**, is the person who hires it for a limited time:—

(1) For a single load or a specified number of trips, the owner reserving possession of it, and navigating it for the person who has hired it; or

(2) For a season or any other specified time, the owner giving up possession, and the charterer taking possession and managing and navigating the ship.

8. **Charter Party** is the name given to the contract between the owner and the person hiring the vessel. It will vary according to the agreement between the parties. If for a single trip, it will specify the length of the trip, the limit of time allowed for loading and unloading, etc. What goods are to be carried, the amount to be paid for such work, and who is to load and unload the vessel. The following is a simple form of Charter Party, where th vessel is let for a term, to be run and managed by the hirer.

Form of Charter Party.

Articles of agreement made and entered into this 1st day of April, A.D. 1903, between Frederick Henry Lummis, of the port of Meaford, Ontario, gen-

tleman, of the Frst part, and Gaptain Neil McKenzie, of the City of Kincardine, County of Bruce, Ontario, of the Second part, Witnesseth that the party of the first part has this day chartered and hired unto the party of the second part, the steamship "Favorite" of Meaford, Ontario, of 600 tons burden, with all the appurtenances thereto belonging, and all chains, cables, hawsers, anchors, tackling, etc., that belong to her, for the term of eight months, to be computed from the first day of April, instant, said ship to be delivered at the wharf at Meaford at the sealing and delivery of this agreement. In consideration whereof the party of the second part agrees to pay to the party of the first part, the sum of One Thousand Six Hundred Dollars, in equal portions of Two Hundred Dollars at the end of each month, during the continuance of this agreement, and to deliver the said vessel to the party of the first part, at the wharf aforesaid, on the 1st day of December next in as good condition and repair as she now is, excepting ordinary wear and tear.

In witness whereof the parties hereto have set their hands and seals the day and year first above written.

Witness: FRED. MCDOWELL. F. H. LUMMIS, [L. S.] NEIL MCKENZIE. [L. S.]

9. Demurrage.—When a vessel is chartered for a certain voyage, a specified time is allowed the charterer for loading and unloading. If the vessel is detained longer than the time agreed upon, the owner will charge a certain amount per day for such detention. The amount charged for over time is called Demurrage.

10. Primage is a small fee paid to the Master or Captain of a vessel by the shipper over and above the ordinary freight, for his care and trouble in looking after the goods while aboard his ship.

11. Towage is any amount paid by a vessel in distress or in need of help to another vessel for assistance in getting afloat when aground, or for drawing a vessel into or out of port. Towage has to be paid whether the efforts are successful or not.

12. Salvage is the sum paid for rescuing property abandoned or in imminent peril at sea. The compensation for such services varies according to the difficulty. It is sometimes as much as half the value of the property saved. Salvage is not paid for unsuccessful efforts at saving goods.

13. Loss or Injury.—The owners of vessels are responsible for loss or damage to freight when occasioned by negligence on their part or on the part of their servants, the seamen, etc. They are not liable for damage occasioned by some extraordinary peril at sea, such as a violent storm, a fire at sea, piracy, etc. Hence goods should be insured by the owners against such perils.

14. General Average.—When there is extraordinary peril at sea on account of a violent storm, it is sometimes found necessary to lighten the ship by sacrificing some property in order to save the ship and the remainder of the property. Sometimes the ship's anchors, masts, spars or rigging have to be cut away. All such losses must be shared by the owners of the property saved by such sacrifice. Such loss must be :—

(1) Necessary ;

(2) Voluntary ;

(3) For the express purpose and intention of saving something else, and such effort to save must be successful.

Goods thrown overboard are said to be "Jettisoned." They should be such as are best calculated to save the ship. This is not an ordinary loss ; it is an expense incurred for the benefit of all, and all must share it according to their respective values. Goods washed overboard do not come under General Average.

15. Adjustment of Loss of Jettisoned Property.—The general rule is that all goods carried as freight, including that thrown overboard, together with the vessel, must share the loss according to the value.

Suppose the steamer Athabasca, proceeding on her voyage from Port Arthur to Owen Sound, is caught in a violent storm :

The vesseel is worth say.	$300,000
The cargo consists of 40,000 bushels of wheat, belonging to Messrs. Ogilvie & Co., Montreal, valued at	50,000
10,000 sacks of flour, belonging to Ogilvie & Co	30,000
20,000 sacks of flour, belonging to J. McLauchlan & Sons, Hamilton, ...	60,000
300 head of cattle on deck, owned by H. Kennedy & Co., Port Arthur, ...	20,000
Machinery for Foundry, owned by Geo. Corbet & Son, Toronto	40,000
Total	$500,000

Suppose the 300 head of cattle were jettisoned to save the remainder of the property, the loss would be shared in proportion to the value of the several items above. We find the property sacrificed is 4 per cent. of the total value of the vessel and cargo, therefore, the owners share the loss as follows : The vessel owners $12,000; Ogilvie & Co., $3,200; J. McLauchlan & Sons, $2,400 H. Kennedy & Co, $800; G. Corbet & Sons $1,600.

16. Maritime Loans.—If a vessel is damaged so that a voyage cannot be continued without repair, the Master may have her repaired, and can, (though

only a hired Master, and not the owner), mortgage or hypothecate the vessel, and cargo too, if necessary, to procure such repairs as will enable him to proceed on his voyage. The obligation or mortgage thus given, is called a Bottomry Bond. If such bond is not paid by the owner of the vessel on her arrival at her destination, the vessel, or cargo, or both, may be sold by the lender of the money. If the vessel, on continuing her voyage, is lost, the lender loses his security. If other Bottomry Bonds are put on the vessel, the last one put on has the preference over all previous bonds. The order is thus the reverse of the ordinary mortgage. The last one is given, not subject to the former bonds, but to save what would otherwise be lost to former lender.

CHAPTER 55.

TRANSPORTATION OF PASSENGERS.

- DEFINITION.
- EXCEPTIONS.
- OBLIGATIONS.
- THE COMPENSATION.
- THE TICKET.
- BAGGAGE.
- CARRIERS' LIABILITY.
- NEGLIGENCE.

1. **Definition.**—Any person or company that goes into the business of carrying passenges as a public employment, may be called "a common carrier of passengers." Examples: Railway companies, owners of steam and sailing vessels, stages, etc. Being common carriers, their offers are general and may be accepted by any person. The general rule is that they are bound to carry any person who asks them to carry them to any place on their route.

2. **Exceptions.**—

(1) If they refuse to pay their fare in advance; or

(2) If the conveyances are already full; or

(3) If they are intoxicated, disorderly, or affected with disease that would be dangerous to other passengers.

3. **The Obligations** of the common carrier are:—

(1) To carry every one who presents himself, (subject in general to the above exceptions.)

(2) To answer for all things carried as insurers, subject to the "Carriers Acts." See Revised Statutes of Canada, chapters 82 and 109.

4 The Compensation.—The maximum ratio of charge fixed by Parliament, chargeable by a Railway Company for the carriage of a passenger, is 3 cents per mile, in Eastern Canada; and 4 to 5 cents per mile in Western Canada. The company may charge any less sum, but not greater. On stages etc., the fare is often a matter of agreement between the parties. The fare is usually paid in advance. A passenger may be put off, if he refuses to show his ticket.

5. The Ticket is not the contract, it is only *evidence* that a contract has been made. If it is specified that the passenger is only to be carried by a particular train on a particular day, he cannot claim the right to ride on another train, or on another day. Any person taking a return ticket, usually has thirty days, or a longer time, in which to return. In Canadian law, the Company has contracted to take that person a certain journey and back again, and their contract is not fulfilled until they bring him back, even if it is past the time mentioned in the ticket. This applies to the regular tickets of the Company, and not to special excursion tickets.

A person who purchases a return ticket is not allowed to transfer that ticket to another, if he does not wish to return on it. If he, however, returns it to the company, they will refund the amount paid for the unused portion of the ticket.

6. Baggage.—The payment of a passenger's fare entitles him not only to be carried to the place agreed upon, but to have his necessary baggage carried (free, up to a specified weight,) for him. Baggage includes clothes and other necessaries, but would not include a case of dry goods, or hardware or a barrel of apples, or money or jewelry. The carrier is responsible for the safe delivery of the baggage, the same as for ordinary freight, and has a lien on it for unpaid fare. The check is the evidence of the delivery of the baggage, which should usually be carried on the same conveyance or train as the passenger.

7. The Carrier's Liability.—The carrier of passengers is not liable to such an extent for accident or mishap as the carrier of freight, because he can fix and pack, and secure freight in a place, and keep it there. He can fasten it down, but he cannot fasten the passenger down.

Proof of great care will excuse the carrier from liability for injury to a passenger, but no proof of care will relieve him of responsibility for loss of freight or baggage. He has a right to make reasonable rules for the receiving of passengers, and for their conduct while being carried, and to expel disorderly or insulting people from the conveyance.

8. Negligence.—The carrier is responsible for injury occasioned by his negligence, either—

(1) To persons he is carrying in his conveyance; or

(2) To persons he injures by his conveyance.

Suppose a train were running at a high rate of speed over a crossing, and neglecting to give proper signals of approach, were to run into a horse and waggon and destroy them, and be thrown from the track and injure passengers. The R. R. Company would be responsible:—

(1) To passengers being carried, for injury to person or baggage; and

(2) To the owner of the horse and waggon, for injury done to it.

The Company is bound to provide skilful employees, where they are necessary, such as engineers, pilots, conductors, masters of ships, etc., and all such employees must obey all laws of the country made for their special guidance

CHAPTER 56.

TRANSPORTATION OF FREIGHT.

- Definition.
- Common Carriers of Freight.
- Obligation to Take Goods.
- Compensation.
- Carriers' Lien.
- Who is Responsible.
- The Carriers' Responsibility.
- Carriage of Live Stock.
- Failure to Remove Freight.

1. Definition.—The carriage of goods from one place to another is a business of great importance to the people of any country, and the higher the civilization, the greater demand is there for the exchange of products, and for the transportation of them from place to place. Persons who transfer goods from one place to another, are called *carriers*; and those who make a business of carrying goods for the public, are called *common* carriers of freight. A carrier who works for one person only, is called a *private* carrier. The mode of transportation is regulated by custom and the circumstances existing at the time.

2. Common Carriers of Freight are those persons or companies that transport goods, and

(1) Follow it for a business;

(2) Offer their services to the public generally. Examples are: such as railroads, steam and sailing vessels, express companies, draymen, carters, transfer companies, etc.

3. Obligation to take Goods.—Generally speaking all persons are free to make contracts or not, just as they please. There is an exception in the case of the common carrier. Being in the business of freight carrying, he is understood to hold out a standing general offer to transport goods, and any person accepting his terms immediately closes a contract with him. He is obliged to take any goods offered him for transport to any place in his route. He may, however, refuse to take the freight:

(1) If his vehicles or conveyances are full; or
(2) If the goods to be carried are of a dangerous or explosive nature;
(3) If the shipper refuses to pay the freight in advance.

4. Compensation.—In case of railroads, etc., they usually have a tariff of rates, and every shipper, whether great or small, is charged at the same rate. The law of the country fixes a rate that must not be exceeded. With truckmen, etc., the compensation is usually a matter of agreement between the parties

5. Carrier's Lien.—Any Common Carrier that transports goods may hold the goods for the payment of his charges, if they have not been prepaid. In other words he has a lien on the goods for the freight. If he delivers them voluntarily, he has no lien on the goods; he may then recover the freight as a personal debt. When freight is carried on two or more lines, it is customary for the second company to pay the first company's charges. The first company on delivering the goods, relinquishes their lien on the goods to the second company, and the second company has a lien for both their own charges and the prepaid freight. To put it in a few words:

(1) The carrier may refuse to take the goods unless the freight is paid in advance;
(2) He may carry the goods and keep them until the freight is paid; or
(3) He may transport and deliver the goods and sue the person he has the contract with for the freight.

6. Who is Responsible for the Payment of Freight.—When freight is not paid in advance, the carrier usually collects it from the person he delivers the goods to. If he chooses to deliver them, he may recover the amount of the freight from the shipper, as it was with the shipper the contract was made, and not with the consignee.

7. The Carrier's Responsibility.—The carrier is responsible for the safe delivery of the goods at their destination in good condition. He is paid to carry the goods with reasonable care, both as to the careful handling of them, and to their safety from theft, etc. If he and his servants do not exercise diligence in the care of the articles, he must pay the loss if caused by

negligence of himself or any of his employees. (He is used for convenience to represent railway companies, etc., as well as individuals.) The carrier is not, however, responsible for loss occasioned by—

(1) Decay or leakage; or

(2) Loss occasioned by improper or careless packing by the owner; or

(3) Loss by an act of God, such as destruction by lightning; or

(4) Loss by a public enemy, that is, by the armies of foreign powers at war with his country.

8. **Carriage of Live Stock.**—When live stock is carried, a pass is usually furnished for an attendant whose duty it is to care for, feed and water the animals, therefore the company is not responsible for any loss arising from :

(1) Lack of food or water; or

(2) Any loss occasioned by the habits or the instincts of the particular animals transported. For example : a railroad company transports a car load of cattle, and during the time one animal gores and kills another, the Company is not responsible for the loss that might have been preventsd by ordinary care or diligence of the attendant.

9. **Failure to Remove Freight.**—When freight arrives at its destination the carrier gives notice to the consignee of its arrival. If the consignee fails to take it away within a reasonable time, the Company may charge for storage. The carrier is not responsible for destruction by vermin, etc. When freight is shipped by the car, to be unloaded by the consignee, if he fails to unload within reasonable time, he may be charged demurrage for such time as he unreasonably detains the car.

CHAPTER 57.

HOST AND GUEST.

I. **The Host.**—The law of Host and Guest applies to keepers of hotels, inns, taverns, public houses, etc. These are synonymous terms for persons who are engaged in supplying board and lodging to travellers. The proprietor or keeper of such a place of entertainment is called a Host or Landlord.

2. The Guest is any person who is absent from home, travelling on business or pleasure, and who comes to an hotel seeking board or lodging, or both. As soon as he is accepted, he becomes a guest. Bacon says that inns are for passengers and wayfaring men. A friend or neighbor can have no action against the landlord as a guest.

Any person who leaves his baggage at a hotel, and lodges elsewhere, is not a guest; and the landlord not receiving any compensation, is not responsible to any great extent for the baggage left with him. It is a bailment for the benefit of the bailor only.

If a traveller leaves his horse at the hotel for entertainment, the traveller is a guest, and the hotel-keeper is responsible for the baggage left with him. If the guest ceases to be a traveller, and agrees with the landlord for board for at definite time, he ceases to be a guest, and becomes a boarder.

3. The Host's Duties.—The inn-keeper being in the business of supplying board and lodging to travellers, and his offers being general, they may be accepted by any person; hence he is bound to accept all travellers that demand entertainment, the only exceptions being:—

[1] That his premises are already full; or,

[2] That the person is drunk or disorderly; or,

[3] That he has some infectious or contagious disease that would be dangerous to other guests; or,

[4] That the guest refuses payment in advance for such entertainment, or;

[5] That the person wishing to be a guest is a reputed thief or burglar, who would endanger the property or persons of his guests.

4. The Host's Liabilities.— The Host is bound to exercise extraordinary care over baggage, money, or property of his guests, and is responsible for the acts of his servants and his guests. If a guest's property is stolen, the landlord is responsible for it, no matter whether it was in the guest's room, or under the host's especial care, so long as the guest did not by special agreement assume the liability himself. If the host asks the guest to place his property under his charge, or under lock and key, and his guest refuses to do so, the landlord is relieved of liability. Hotels frequently have safes or vaults, where the guests are requested to store their valuables. If they neglect to do so, the property will be at their own risk. The hotel-keeper is responsible for loss by fire, or in any other way except by alien enemies, or an act of God, or by the servant or companion of the guest.

5. The Guest's Duties are to behave in a proper and seemly manner to place his property, baggage or money under the landlord's control, if requested; and to pay the compensation required by the landlord in advance, or whenever requested.

6. The Host's Lien.— The Host has a lien on the goods, baggage, horses and rigs, etc., of the guest, for the payment for all board, lodging, etc., supplied to him or to his family or servants that may be travelling with him. He may detain such articles until the bill is paid. The host may keep the property of third persons that is in possession of the guest for his expenses, unless it was known at the time of making the contract for lodgings, that the property was not owned by the guest.

7. Boarding Houses differ from hotels in several particulars:—

(1) They are not open to the public; and,

(2) They are not intended for travellers or transient guests, but for permanent boarders:

(3) They are not bound to receive any person unless they wish to;

(4) They are not responsible for the care of baggage and property, and would not be liable for the loss of them, unless such were caused by gross negligence;

(5) Boarding house keepers have no lien on the property of their boarders for their board and lodging as the hotel-keeper has.

The majority of hotel-keepers are boarding-house keepers as well, because they usually have a number of permanent boarders who reside in the house. The relation of the landlord to such boarders is the same as any other boarding house keeper, and not the same as the relation sustained to his travelling guests. In the Province of Manitoba a boarding-house keeper is given a lien on the luggage of a boarder for arrears of board. (See R. S. M. Cap. 73.)

CHAPTER 58.

TELEGRAPHS.

- The Parties.
- The Terms.
- Accuracy.
- Promptness.

1. The Parties.—In the sending of a telegram there is a contract, and two parties to the contract:—

(1) The sender of the message;

(2) The Telegraph Company that transmits it.

The sender may be any person who tenders a message for transmission, and offers to pay for it.

The second party in the contract in America is a Telegraph Company—a stock company that is in the business of telegraphing for the purpose of making profit.

In England and some other countries, the Government is the owner and operator of the telegraph system, in the same way that the Government is the owner and operator of the postal system in Canada.

2. **The Terms** are usually printed on the telegraph blank on which the message is written Such are the terms upon which the Company offers to take the message ; the sender accepts them by writing his message on the blank containing the terms. The ordinary terms are :—

(1) The sender agrees to pay for the message at the regular rate ;

(2) The Company may refuse to transmit the despatch unless it is paid in advance.

(3) The Company agrees to send the message by its telegraph lines promptness and deliver it to the person it is addressed to ;

(4) The Company likewise agrees not to reveal any of the contents of the message to any person except the person it is addressed to. It is a secret or confidential messenger for its patrons.

3. **Accuracy.**—The Company usually does not hold itself responsible for the accuracy of the despatch, unless the sender will pay for the message being repeated to the place it is sent from. Then it is held responsible for mistakes.

4. **Promptness.**—The Company is bound to send all messages as soon as possible; and to send in the order in which they were received. If there is any unnecessary delay on the part of the Company, they are responsible for any loss occasioned by the delay.

CHAPTER 59.

AUCTIONEERS AND AUCTIONS.

- Definition.
- The Auctioneer an Agent.
- Terms of Sale.
- The Bidding.
- The Auctioneer's Lien.
- The Auctioneer's License.

1. **Definition.**—An Auctioneer is a person who is authorized to sell merchandise or lands, by public auction. He cannot buy ; he can only sell

If he wants an article that is being sold, he must purchase it from some person who has purchased it at the sale, or make known publicly before taking any bids, that he wishes to bid on the article himself.

2. The Auctieneer an Agent.—While the Auctioneer is selling an article, he is the agent of the seller. When he knocks the article down, the act of knocking down is on behalf of the purchaser, and he is agent for such purchaser. He is also agent for both when he makes a memorandum of the sale in his book, as he binds both parties.

3. Terms of Sale.—Unless otherwise stated, goods sold at auction are sold for cash. If there is credit to be given, the terms of credit should be stated in the written or printed "terms of sale." The terms of sale should also be read or stated by the auctioneer at the time of sale. They may contain conditions such as :—

(1) The terms of credit on which the articles are sold ;
(2) That the first bid must be above a sum named ;
(3) The amount to be advanced at each bid ;
(4) That there may be a reserve bid, or a set price ;
(5) The amount of deposit to be paid down at time of sale.

4. The Bidding.—An Auction Sale is one conducted publicly, for every offer is made public. Every *bona fide* bid should be accepted by the Auctioneer, and the sale conducted with the greatest of fairness. The bidding may be either :—

(1) With an increase of price at each bid, such as is usually the case;
or,
(2) With a decrease in price at each bid. Example : The back taxes on a farm are say $60. The Auctioneer asks for bids in acres to pay the taxes. A bids 20 acres ; B bids, say 18 acres ; C bids, say 15 acres. In other words he offers to pay the $60 due for 15 acres—the best offer for the seller. The letting of contracts of work is often done in this way. An Auctioneer is not bound to sell on one bid. It takes two bids to make competition. A second bid may make it compulsory on the part of the Auctioneer to sell, unless there is an upset price.

5. The Auctioneer's Lien.—The Auctioneer's compensation is usually a commission on the amount of the goods or lands sold. He has a lien on the goods for his commission until they are delivered to the purchaser. He may sue the purchaser for his commission.

6. The Auctioneer's License.—Each county and city may charge a fee for the licensing of persons who may sell by public auction within their borders. They may make special rules governing the Auctioneer and his sales.

CHAPTER 60.

BANKING

1. The Business Banks May Do.—Banking consists principally in dealing in money. The following are different departments of the business:—

(1) The receiving of money on deposit ;

(2) The loaning of money ;

(3) The issue of Bank Notes or Bills for use, instead of gold and silver.

(4) Exchange,—the drawing of drafts for the payment of money at a distance instead of remitting the currency ;

(5) The collection of negotiable paper for customers ;

(6) The purchase and sale, etc., of Bonds, Debentures, Gold, Silver, and Foreign Currency, etc.

2. The Business Banks May Not Do.—Banks are incorporated for carrying on the ordinary business of banking, and are prohibited from carrying on other kinds of business, either directly or indirectly. They shall not—

(1) Deal in buying or selling, or the bartering of goods, wares, merchandise, or engage in any such trade or business whatsoever ;

(2) They shall not, directly or indirectly, deal in or lend money, or make advances upon the security or pledge of any share of its own capital or upon the capital of any other bank ;

(3) They shall not, directly or indirectly, lend money on Mortgage on Real Estate, Ships, Wares, Merchandise, etc.

3. Banks are Incorporated Companies.—Under the Bank Act of 1890, banks must be Joint Stock Companies, chartered by special act of Dominion Parliament, as the Dominion Parliament has control of all matters and things that pertain directly to the commerce and trade of the country. The charters of the existing Canadian Banks expired in 1891. The Act of 1890 continued the charters for 20 years. Banks must have a certificate from the Treasury Board of the Finance Department of the Dominion, before beginning banking operations; and this certificate cannot be obtained until a deposit of at least $250.000 has been left with the Receiver-General.

4. Double Liability.—The Banking Companies are formed and governed similarly to other Stock Companies, but the liability of the shareholder is different on account of the nature of the business—the integrity required for the great trusts reposed in the Banks. On account of this every person who takes Stock in a Bank is liable for all the stock he subscribes for, and for as much more.

For example—John Frost subscribes for stock to the amount of $1,000 in the Traders Bank. He is liable to pay the $1,000 as called up by the Directors just the same as in any other Stock Company. If, however, the Bank went into liquidation, the Directors would call up from him another $1,000, payable 20% every 30 days until all is paid.

5. The Name.—No person, or persons, Company or Association, may take any such title as "Bank," "Banking Company," "Banking House," "Banking Association," or "Banking Institution," without obtaining a certificate from the Treasury Board. Any private partnership or concern, though they do a banking business, is not allowed to assume a name like any of the foregoing, descriptive of its business as a banker, under penalty of $1,000 fine, or imprisonment not exceeding 5 years, or both.

6. The Officers.—The officers of a Bank are called "Directors." The Directors elect among themselves a President, Vice-President, Secretary, General Manager, etc. The management of the Bank, generally, is left with them.

A majority of the Directors of every Bank must be British subjects, by birth or naturalization.

No person is eligible for a Director of a Bank unless he has considerable financial interest in the Bank. The property qualification required by

the statute is $3000 of paid up stock, if the capital of the Bank is not more than One Million Dollars ; $4000 paid up, if the capital is over One Million, and not more than Three Millions. If the capital is over Three Millions, paid up stock of $5000 is the necessary qualification for a Director.

7. Deposits.—A deposit is in reality a loan to the Bank. These loans to the Bank are of three kinds, differing according to their terms :—

(1) Current Account ;
(2) Savings Bank ;
(3) Deposit Receipt.

The act of opening an account with the Bank begins the contract. The banker states his terms, and the depositor accepts them and makes his deposit. The Bank may use the depositor's money for any legitimate purpose, but must pay it back to him when he desires it.

8. Deposit on Current Account.—This is the plan on which merchants and traders deposit their funds. They use the Bank for two purposes :—

(1) To keep their money safely ; and
(2) To pay out their money on cheque as they order it, so taking from every person the best evidence of the making of a payment—a cheque drawn to their order and paid by a disinterested party—the Bank.

The banker receives the use of the money for his trouble. Occasionally the banker pays the depositor a low rate of interest on his lowest monthly balance. The depositor receives from the bank a pass book as an evidence of his deposit. All the deposits made and cheques charged are entered in this pass book, and a balance struck monthly, and all the cheques that have been paid are returned to the depositor. (For form and laws regarding cheques, see Chap. 20—21, pp. 74—80.) The depositors in a Bank have a third claim on the assets of an insolvent bank, the Bank notes having a first claim, the amount due the Government being the second charge:

9. Saving Bank Accounts are those kept with depositors who deposit their earnings for the purpose of accumulating them. It is customary for such accounts to increase steadily.

(1.) The funds are subject to cheque by the depositor ;
(2.) The depositor receives from the Bank a small rate of interest, which is added to the account yearly or half-yearly, according to agreement.
(3.) A small pass book in which the account is kept is the evidence of the amount on deposit. It differs from the current account, as there is usually a steady increase in the amount of the account,

while in the current account method there might be ten thousand dollars to the depositor's credit to day, and not ten cents to-morrow.

(4.) Deposits may be received from any person without regard to age or station in life.

10. Deposit Receipt.—When a depositor has a sum of money that he can leave at interest for a time, he usually deposits it on "Deposit Receipt," sometimes called "Certificate of Deposit." (For form, etc., see page 86.) The Deposit Receipt is the evidence of the amount of his deposit with the Bank.

11. The Loaning of Money is the second department of the business of the Bank. As noted previously in this chapter, the Banks are not allowed to invest their funds in Real Estate Mortgages. The principal business is done in discounting negotiable paper, such as notes, drafts, bills of exchange, etc. These may be either—

(1) Customers' paper, discounted by the holder—that is, notes, drafts etc., that have been given in the ordinary course of trade ; or,

(2) Accommodation paper, in which one person has become security for another (without receiving value) for the purpose of borrowing. (See page 56—58, and 81—82.)

12. The Security Given.—Money is not borrowed from a Bank on the strength or security of one name. In either of the foregoing cases, customers or accommodation paper, there are two names, one as principal debtor and the other as surety. The Bank in each case is an "innocent holder for value," and therefore can collect from all others liable on the paper.

No bill or note in the hands of a Bank, as an innocent holder, can be held void on account of drawing usurious interest, or on account of being tainted by fraud.

The Bank may stipulate for and take any rate of interest, not exceeding 7 per cent. per annum, and may pay any rate agreed upon on deposit. It may charge as high as one-half of one per cent. as commission for collecting the paper of its customers.

13. Collateral Security.—Many persons, very rightly refuse to endorse paper for others, and in turn do not ask for endorsement. They give their own note to the Bank and place valuables along with it as collateral security. The collateral security may consist of any one or more of the following ;—

(1) Customers' Paper, left with the owner's note to secure it ;

(2) Warehouse Receipt, representing grain in an elevator; goods in a storehouse ; lumber, ties, laths, etc., in a yard ; logs, poles, etc., in a bay, cove or boom, etc.

(3) Bill of Lading or Shipping Receipt that represents goods in transit ;

(4) Hypothecation of goods by wholesale dealer; also by manufacturer, while in course of construction, under Section 74 of the Banking Act of 1890;

(5) Mortgages or Liens on Real Estate or Chattel Property.

NOTE.—These are taken only as additional or collateral security, and not as the primary obligation of the maker

Form of Hypothecation under Section 74, Banking Act of 1890,

In consideration of an advance of $600 made by the Merchants Bank to James McLauchlan, for which the said Bank holds the following note, dated Parry Sound, March 1, 1902, for $600 for three months at 7 per cent., the goods wares and merchandise mentioned below are hereby assigned to the said bank as security for the payment, on or before the 4th day of June next, of the said advance, together with interest thereon at the rate of 7 per cent. per annum from the 1st day of March.

This security is given under the provisions of section 74 of the "Bank Act," and is subject to all the provisions of the said Act.

The said goods, wares and merchandise are now owned by James McLauchlan, and are now in his possession, and are free from any mortgage lien or charge thereon, and are in his warehouse, No. 39 Poulett Street, in the Town of Parry Sound, and are the following :—

Two chests Oolong Tea; 50 lbs. Java Coffee; 25 lbs. Myrtle Navy Tobacco; 200 lbs. Candies; 200 lbs. Nuts; 10 boxes Soda Biscuits.

Dated at Parry Sound this 15th day of March, 1902.

JAMAS MCLAUCHLAN. (L. S.)

14. The Issue of Bank Notes.—Banks in Canada, with two exceptions, are allowed to issue Bank Notes to the full extent of their unimpaired paid up capital. Example—If a Bank has $2,000,000 of paid up capital, and none of it has been lost in any way, they can keep in circulation $2,000,000 of their Bank Notes.

All Bank Notes issued must be either $5 or some multiple of $5. All bills under $5, such as 1's, 2's and 4's are issued by the Dominion Government, and every Bank is required to hold at least 40 per cent. of its cash reserves in Dominion Government notes.

Every Bank must receive its own Bank Notes at any of its offices at par in payment for any debt or negotiable paper due them. A bank must not pledge its own notes as security for a loan.

15. The Bank Circulation Redemption Fund, is a fund created under the Act of 1890, in the hands of the Receiver General, by each Bank doing business in Canada, contributing to it an amount equal to five per cent.

of its average circulation, the amount of each Bank's contribution to be adjusted annually on the basis of the average circulation for the past year. This fund is to be used by the Finance Minister, in case of suspension of any Bank, to take up the notes of that Bank at once, so that they may not be sold or paid off at a loss to the holders, nor the holders be inconvenienced by the notes not being negotiable on account of such suspension.

16. Bank Drafts and Bills of Exchange.—Banks arrange with one another for lines of credit, so that one branch may draw a Draft on another Bank or branch of Bank, for a customer who wishes to remit money to any place at a distance. The draft is made in favor of the person that the customer wishes to pay the debt to; and is remitted usually by mail to the creditor. The Banks settle periodically, say every three months, among themselves Drafts for foreign countries are known as Bills of Exchange.

17. Making Collections.—Business men and others frequently leave their negotiable paper in the hands of their banker for collection. The Bank charges from one-eighth to one-half of one per cent. commission for their work.

(See form of endorsement for collection, page 71, section 1.)

18. Exchange, Etc.—Besides the foregoing lines of business, Banks frequently purchase and sell for customers all kinds of securities such as stocks, bonds, debentures etc., charging usually one-eighth of one per cent. on the par value of the security sold or bought.

Another line of business is the exchanging of foreign money brought into this country by persons coming into the country giving them current funds for what is not current funds. A commission according to agreement is charged for this work.

19. Statute of Limitations is inoperative in case of liability by any Bank as to

(1) Its Bank Notes issued;

(2) Its deposits from customers;

(3) Its dividends due stock holders.

Unlike any ordinary debts, these never become incollectable by the Statute of Limitations.

20. Dominion Government Cheques are to be paid at par by any Bank where they may be presented. They are not subject to any commission or discount for collection.

CHAPTER 61.

PATENTS.

1. **Definition.**—A Patent is a document issued by the Dominion Government, granting to an inventor the exclusive right to make some article, machine, or part of an article or machine, compound or mixture, that he has invented. This Patent prevents others from making and using the article without permission, thus keeping it for his own use and benefit.

2. **The Purpose** of granting a Patent is to encourage inventors to make research and so perfect machines and other articles that business and manufacturing interests may be extended and improved.

If an invention is a good one, many persons will be found anxious to use the improved article; and unless the inventor takes the precaution to patent his invention, many persons would be selfish enough to use the labors of the inventor without giving any remuneration for his trouble, and, in fact, compete with him in making and selling the article.

The Patent protects the inventor and enables him to fix his prices, and so reap the reward of his labors. If an improvement on an article is patented, the Patent does not give the patentee a right to make the original article, nor yet does it give the owner of a patent for the article improved on, a right to make the improvement.

3. **How Obtained.**—Applications should be made to the Commissioner of Patents, Department of Agriculture, Ottawa, accompanied by the following:

(1) A working model of the article to be patented;
(2) A drawing, or series of drawings, showing the various parts of the article, one copy on bristol board and two copies on tracing linen;
(3) Complete descriptive speicfications of the invention;
(4) A fee of $60, if patent is required for eighteen years; $40 if for twelve years; and $20, if for six years.

4. What May be Patented. —Almost anything may be patented that is *new* and useful. We emphasize the word "new," because anything that is generally known to the public cannot be said to be new. It may be a whole machine, a part of a machine, a medicine, a mixture, a process of manufacture, in fact, any kind of new invention, contrivance or plan may be patented

(1) The patentee must have domicile in Canada;

(2) The article must be new, and not in use or for sale for more than a year before the date of the application;

(3) If patented in a foreign country, it must not be more than a year patented, before the application is made in Canada.

5. Patents May be Refused.—The Commissioner may refuse to grant a Patent in any of the following cases:—

(1) When he is of the opinion that the alleged invention is not patentable in law.

(2) When it appears to him that the invention is already in the possession of the public, with the consent or allowance of the inventor;

(3) When it appears to him that the invention has been described in a book or printed publication before the date of application, or is otherwise in the possession of the public;

(4) When it appears to him that there is no novelty in the invention;

(5) When it appears to him that the invention has already been patented in Canada; or if the Commissioner has doubts as to whether the applicant is the first inventor.

6. Sale of Patents.—Any person who has obtained a Patent for an article may dispose of his right to make the article, either entirely or partially. When an inventor sells a partial right or a partial interest in his patent, and takes notes or Bills of Exchange therefore, they are subject to special laws, see page 74.

7. Infringement.—When a person makes or sells a patented article, without consent of the patentee, he is liable for infringement:—

(1) To pay the patentee for the loss sustained;

(2) To be stopped in the manufacture and sale of the article;

(3) To have any of the articles he has made confiscated;

(4) To be fined, and to be the cause of his customers being fined for using the patented article without leave.

8. To Mark "Patented" on Each Article.—Every patentee must paint or affix the word "patented" and the date of the patent to all his articles made under the patent, thus—"Patented 1902"—so as to give due notice to

all that his rights are protected by a patent. The penalty for neglect is a fine of not more than $100, or two months' imprisonment.

9. Forfeiture.—The patentee, or some person for him, or some assigne of his, must within two years from date of the Patent, begin to manufacture the patented article in Canada, and continue to manufacture it in Canada, or the patent will be forfeited for non-user.

CHAPTER 62.

COPYRIGHT.

- Definition.
- Who May Copyright a Work.
- Conditions of Copyright.
- Penalties.
- Fees, Etc.

1. Definition.—A Copyright is the exclusive right given by the Government to any person, who is the author of any book, map, chart, musical composition, painting, drawing, engraving, to print, publish, and sell such book, map, chart, etc., for his own benefit during 28 years from the date of the copyright.

The author, or his legal representatives, may within one year after the expiration of the 28 year term, renew the Copyright for 14 years.

2. Who May Copyright a Work.—Any person living in Canada or any part of Great Britain or her colonies, in a country having an International Copyright treaty with the United Kingdom, who has written, engraved, drawn, or invented such book, map, chart, etc., or his assignee. If a book is published anonymously, it is sufficient to enter the name of the first publisher instead of the author.

3. Conditions of the Copyright.—The following are the principal conditions in reference to obtaining and holding Copyright in Canada :—

(1) The work must be published, or reproduced in Canada ;

(2) Three copies of the work must be deposited with the Department of Agriculture at Ottawa. One of such copies is deposited in the Parliamentary Library of Canada, and one is sent to the British Museum ;

(3) In the case of a painting, drawing, statuary, sculpture, etc., a written description will do instead of the copies of the work ;

(4) The author must insert in all books, etc., on the face or back of the title page, the notice of copyright, "Entered according to Act of

Parliament in Canada, in the year 1903 by A——B——, in the office of the Minister of Agriculture." This must be put on the face of drawings, maps, charts, etc. The signature of the artist on a painting is sufficient.

(5) Copyright is for 28 years, and an extension of 14 years may be had on application by the author or his legal representatives.

(6) Nothing of immoral, treasonable, licentious or irreligious character may be copyrighted.

4. Penalties.—Every author who fails to comply with the Regulations, loses his copyright. Any person infringing upon the rights of the author is guilty of misdemeanor, and may be punished by fine, part of which goes to the Crown and part to the author. All such works as are infringements of Copyrights are also confiscated.

5. The Fee for registering a Copyright is $1 for certificate of Registration of Copyright, 50 cents; copies of documents extra.

The correspondence with the Minister of Agriculture is carried on free of postage. All business may be done by correspondence. All applications, specifications, etc., should be legibly written on foolscap.

CHAPTER 63.

TRADE MARKS, INDUSTRIAL DESIGNS and TIMBER MARKS.

- Trade Mark,
- A General Trade Mark.
- A Specific Trade Mark.
- Refusal of Trade Mark.
- Industrial Designs
- Timber Marks.

1. A Trade Mark is any device or name used by a manufacturer or merchant to distinguish his own particular goods from those of other merchants and manufacturers. All marks, brands, labels, names, packages or business devices used by a person to mark his goods, may be entered in the Trade Mark branch of the Department of Agriculture for his own exclusive use and benefit. Trade Marks are of two kinds—*General* and *Specific*.

2. A General Trade Mark is one that the firm uses on all the goods manufactured or sold by them. Example: The Pure Gold Manufacturing Company of Toronto uses the trade Mark "Pure Gold" on all groceries spices, etc., put up by them. This is a general Trade Mark. The fee for registering is $30. The duration of a General Trade Mark is not limited.

3. A Specific Trade Mark is one used for only one kind of goods. Example: "R. R. R." is the specific trade mark for Radways Ready Relief, and not for any other preparations, medicines or mixtures made by the same firm. The fee for registering a Specific Trade Mark is $25. The duration of a Specific Trade Mark is 25 years. The Specific Trade Mark may be continued indefinitely 25 years at a time

4. Refusal of Trade Mark.—The Minister of Agriculture may refuse to register a Trade Mark :—

[1] If the proposed Trade Mark is identical with or similar to a Trade Mark already registered ;

[2] If it appears that the Trade Mark is designed to deceive or mislead the public ;

[3] If the Trade Mark contains any immoral or scandalous figures ;

[4] If the proposed Trade Mark does not contain the essentials necesrary to constitute a Trade *Mark.*

5. Industrial Designs.—The proprietor of any Design may have it registered, and thus secure the exclusive use of the design. Many firms have a special design for drawing, for letter heading, labels, patterns for goods, etc., that they desire the exclusive use of ; they register the design. All registered designs must be designated by the word "registered," or the letters "Rd." being on the design in some place, to warn others of the fact of its registration. The fee for Registering is $5, and the term five years. The design may be refused registration, if it contains any figure that is contrary to public order or morality.

6. Timber Marks.—Every lumberman floating or rafting timber on inland waters of Ontario and Quebec, must Register a Mark or Design, that he will stamp in a conspicuous place on all timbers floated by him. The fee for Registration is $2. The registration gives him exclusive use of the Mark. Every lumberman must register his mark within one month of beginning business.

CHAPTER 64.

AFFIDAVITS AND DECLARATIONS.

1. An Affidavit is a wrttten statement of facts taken in some legal proceeding, sworn or affirmed to by the person or persons making the statement. To prevent the ordinary form of oath or affirmation being used outside of judicial business, an Act was passed by the Dominion Parliament, limiting the use of the Affidavit to strictly judicial work. Any other verifications necessary are made by Statutory Declarations under the Act.

2. The Statement of Facts should be a clear and unequivocal expression in the first person in the narrative form, and divided up into paragraphs, so as to bring out each particular, separately. When drawn up in reference to a suit they are usually headed "In the matter of Smith vs. Jones."

3. Oaths or Affirmations.—All persons having conscientious scruples in reference to taking an oath are allowed to make an Affirmation. Such are Quakers, Mennonites, Tunkdards, Moravians, etc. The only difference is in form. The crime is the same in each case if a false statement is made, viz., Perjury. The oath or affirmation should be taken with due solemnity, standing with the head uncovered. There is one exception—a Jew takes an oath on the Old Testament with covered head. The Magistrate, Notary or Commissioner should satisfy himself that the person taking the oath (the deponent) fully understands what he is swearing to, or affirming to: and if necessary, explain it to him :—

(1) When a Gentile takes an oath, he should kiss the New Testament ;
(2) When a Jew takes an oath, he should kiss the Old Testament ;
(3) When any person makes an Affirmation he should hold up his right hand.

4. Form of Affadavit—

Province of Ontario, County of Grey. TO WIT; } I, Edward Henry Horsey, of the Township of Derby, County of Grey, Physician, make oath and say, 1st, That—

(*Here state the facts plainly in one or more short clear paragraphs, numbered 1st, 2nd, etc.*)

Sworn before me at the Township of Derby, County of Grey, this fifth day of March, A. D. 1903. } E. H. HORSEY.

JAMES MASSON,
A Commissioner for taking Affadavits in the H. C. J.

5. Form of Affirmation.—

Province of Ontario, County of Grey, TO WIT: } I, David Creighton, of the City of Toronto, County of York, Province of Ontario, Gentleman, do solemnly and sincerely affirm, 1st, that—

(*Here state the facts to be affirmed to, clearly and concisely in paragraphs numbered 1, 2, 3, etc.*)

Affirmed before me at Toronto, in the County of York, the fifth day of June, A. D. 1902. } D. CREIGHTON.

JAMES CLELAND, *J. P.*
In and for the County of Grey.

6. Administration of Oath.—The Magistrate, Notary, or Commissioner, says to the deponent :—

"You swear that the statements made by you in this affidavit, now signed by you, are true, so help you God."

The deponent should answer in some such words as "The statements are true," and then kiss the Testament in confirmation of his statement.

7 Administration of Affirmation.—The Magistrate, Notary or Commissioner says to the deponent :—

"You do solemnly and sincerely affirm as you shall answer to Almighty God at the Great Day of Judgment, that the statements made by you in this declaration, now signed by you, are true."

The person making the affirmation should answer with his right hand uplifted, "I declare the statements to be true."

8. Statutory Declarations are made regarding things that are not at the time subject to judicial inquiry. They are used for preserving evidence as to the title of land, such as to who had possession at certain times; when certain persons were born or died; proofs of age: also circulation of newspapers; the accuracy of statements of account or claim; and an endless var-

iety of other matters. The following is a form such as is used by Insurance Companies for getting proofs of the age of a policy holder. The declaration is administered similarly to the affirmation, in such words as—

"You do solemnly declare that the statements made in this declaration subscribed to by you are true." The assent is given thus: "The statements are true."

9. Form of Declaration in Proof of Age—

I, Robert Byron Miller, of the Township of Keppel, in the County of Grey, Province of Ontario, Yeoman, Do SOLEMNLY DECLARE:

(1) That I know Erastus Silas Miller, of the City of St. Thomas, County of Elgin, Province of Ontario, whose life is proposed to be insured with the Temperance and General Life Insurance Company of Toronto, by Policy No. 6742.

(2) That being the father of the said Erastus Silas Miller, I know his age and history.

(3) From my said means of knowledge, I know the said Erastus Silas Miller was born in the township of Keppel aforesaid, on or about the tenth day of June, A.D. 1860.

And I make this solemn declaration, conscientiously believing it to be true, and knowing it is of the same force as if made under oath and by virtue of the "Canada Evidence Act, 1893."

Declared before me at Keppel, in the County of Grey, this fifth day of March A.D. 1902. } R. B. MILLER.

JOHN RUTHERFORD, J. P.
In and for the County of Grey.

CHAPTER 65.

SUBJECTS AND ALIENS, AND THE NATURALIZATION OF ALIENS.

THE SUBJECT.
THE ALIEN.
SUBJECTS BY BIRTH.
SUBJECTS BY MARRIAGE.
SUBJECTS BY NATURALIZATION.
OATH OF RESIDENCE.
OATH OF ALLEGIANCE.
RIGHTS OF ALIENS.
DISABILITIES OF ALIENS.
EXPATRIATION.
REPATRIATION.
THE ALIEN'S RELATION TO THE LAWS.

1. The Subject.—In Canada, a subject is a person who lives in Canada and is under protection of the British Crown, and owes his or her allegiance

to the ruling Sovereign in Great Britain, and to the representative of the Sovereign in Canada. British subjects are such :

[1] By birth ;
[2] By naturalization.

British subjects may be either resident in British Dominions, or in a foreign country. Those residing in this country need no reference. Those residing in other countries may be :—

[1] Consuls or agents of the Government, residing in foreign countries as representatives of the Government.
[2] Persons living in other countries, or engaged in trade or commerce there, either as agent or principal.
[3] Those travelling in foreign countries, whose residence is only temporary.

2. **An Alien** is a subject of a foreign country, who does not claim protection from Great Britain, nor owe any allegiance to the reigning Sovereign. They are of three kinds :—

[1] Consuls, officers, agents, etc., of other countries, living in Canada, and acting for their own country officially.
[2] All persons living in Canada who are resident for purposes of trade, or are living and holding property here, but are still in allegiance to a foreign power.
[3] All persons living in other countries, who are not British subjects, are aliens.

3. **Subjects by Birth.**—All persons born within the British Domains, except those born of alien parents that are agents and consuls for other countries, are British subjects. Children born of parents who are British Subjects, who are British consuls, or agents, residing abroad, though born in foreign countries are British subjects by birth.

4. **Subjects by Marriage.**—When a woman that is an alien marries a British subject, she becomes a British subject by marriage. A woman who is a British subject and marries a foreigner, becomes expatriated, that is, becomes a foreigner, an alien the same as her husband.

5. **Subjects by Naturalization.**—Those persons who are subjects of other countries, who come to reside in Canada, may, after three years residence in the country, take the oath of allegiance to the British Sovereign, and enjoy all the rights and privileges of a natural-born subject. The fol-

lowing are the forms of oaths of residence and allegiance. They may be administered by a Judge or Justice of the Peace, and a certificate is granted and filed in Court. He then becomes subject by naturalization.

6. Oath of Residence.

Dominion of Canada
County of Bruce.
TO WIT:

I, Herman Mackinson, of the Township of Elderslie, County of Bruce, gentleman, make oath and say, that I have resided three years in this Dominion with the intent to settle therein, without having been, during that time, a stated resident in any foreign country.

Sworn before me at Walkerton in the County of Bruce, this 5th day of March, A. D. 1903.

H. MACKINSON.

J. W. BOWMAN, J. P.
In and for the County of Bruce.

7. Oath of Allegiance.

Dominion of Canada.
County of Bruce.
TO WIT.

I, Herman Mackinson, of the Township of Elderslie, in the County of Bruce, gentleman, make oath and say, that I do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty King Edward VII. or reigning Sovereign for the time being, as lawful Sovereign for the United Kingdom of Great Britain and Ireland, and of this Dominion of Canada, dependent on, and belonging to the said Kingdom, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against His person, crown and dignity; and that I will do my utmost endeavor to disclose and make known to His Majesty, His heirs or successors, all treason or traitorous conspiracies and attempts which I shall know to be against Him or any of them, and all this do I swear without any equivocation, mental evasions or secret reservations.

Sworn before me at Walkerton, in the County of Bruce, this fifth day of March, A. D. 1903.

H. MACKINSON.

J. W. BOWMAN, J. P.
In and for the County of Bruce.

8. Rights of Aliens.—Every alien may act in the same capacity as a subject, and enjoy the same rights as a subject so far as the holding of Real Estate and Chattels are concerned. He may buy, and sell, and trade, with equal freedom. He can sue and be sued. He can convey and transmit Real Estate, and hold shares in Building Societies and Joint Stock Companies, etc., the same as a subject. He is just as free in all matters of trade and commerce as a subject, except in the ownership of ships, and occupying the position of a bank, or a Municipal or other representative.

9. Disabilities of Aliens.—Though aliens enjoy freedom of trade almost as much as subjects, they have some disadvantages, of which are the following :—

[1] An alien cannot hold shares in any British ship or vessel, nor be a director of a bank ;
[2] He cannot serve as a juryman ;
[3] He cannot vote at an election ;
[4] He cannot hold Municipal or Parliamentary offices.

10. Expatriation takes place when a British subject renounces his allegiance to the British Sovereign and becomes a subject of a Foreign Power.

11. Repatriation takes place when a person, who was once a British subject and was expatriated and became an alien, takes the oath of allegiance, and becomes once more a British subject.

12. The Alien's Relation to the Laws.—Aliens residing in Canada, are subject to all the laws of the country, just the same as subjects, with one exception. They may sue and be sued, and may be punished for all crimes against society the same as a subject. An alien can never be found guilty of treason, as a subject can. What would be treason in a subject, would be simply a felony in an alien.

CHAPTER 66.

WILLS.

- Definition.
- Names and Definition of Parties.
- Who May Draw a Will.
- When Will takes effect as a Conveyance
- Provisions of a Will.
- Revocation of a Will.
- Corrections in a Will.
- Charitable Bequests, Etc.
- In Lieu of Dower.
- Form of a Will.
- Provisions against Litigation.
- The Signing and Attestation of a Will.
- Reading and Filing of a Will.
- Sundry Points.
- Setting Aside a Will.
- Changing a Will.
- Form of Codicil.

1. Definition.—A Will is a written instrument by which a person gives directions as to how his property is to be disposed of after his death. All

matter of real estate, debts, accounts, personal property, choses in action, etc. may be disposed of by Will, in just such manner as the owner desires. In order to make a Will, the following conditions must exist :

[1] The person must be of the full age of twenty-one years.

[2] He must be the owner of the property he intends disposing of.

[3] He must be of sound mind, and not otherwise incapable of making a contract.

[4] He may be free from constraint, restraint, or undue influence.

2. Names and Definition of Parties.—The relation of the various parties should be clearly in the mind of every person, so that he can draw a Will, either for himself or another, on the shortest notice.

The Testator [feminine, Testatrix], is the name given to the person who makes a Will, *i.e.*, the person who signs it and disposes of his property by it.

An Intestate is a person who dies without making a Will, and whose property has to be distributed by an administrator appointed by the Surrogate Court.

The Heir, Legatee, and Devisee are names of any person who receives property under a Will.

The Witnesses are the persons who are present and see the Will executed by the testator, and sign their name after he does, and in his presence and in the presence of each other.

[1] There must be at least two witnesses.

[2] A legatee should not be a witness, as he would then lose his legacy.

An Executor [Feminine, Executrix], is a person appointed by the Will of a Testator, to manage the estate of the said Testator after his decease.

An Administrator is a person appointed by the Surrogate Court to manage and settle up the affairs of the deceased person.

3. Who May Draw a Will?—Any person who can write in a plain straightforward manner, the desires of the Testator. No legal officer is required—simply two or more witnesses who are not interested parties. The Testator may draw his own Will, if he chooses. Two things only require special attention in connection with the drawing of a Will :

[1] That it give a clear, explicit statement of how the property is to be divided.

[2] Have the statement witnessed by at least two witnesses, who sign in the presence of the Testator, and of each other.

4. When a Will Takes Effect as a Conveyance.—A Will is not binding or valid during the lifetime of the Testator ; it is only after his death that it goes into effect.

5. Provisions of a Will.—It should state :—

[1] The full name, address and calling of the Testator ;

[2] That this is the *last* Will and Testament ;

[3] That it revokes former Wills made.

[4] It should give directions as to payment of debts, expenses, etc.

[5] The division of the property, or conveyance, giving full particulars of every separate bequest.

[6] Executors should be appointed.

[7] It should be dated, signed and properly witnessed. The dating is a very important item, as by the date it can be shown which is the last and binding Will.

6. Revocation of a Will.—A Will once made, continues to subsist unless

[1] It be destroyed. It is not sufficient to tear the name off, as the question might arise, Who tore the name off? To burn it, is perhaps the best. If, however, the testator wishes to preserve it, let him write across it a revocation witnessed by two persons.

[2] A Will is revoked in Ontario by the subsequent marriage of the testator, unless it is declared in the Will that it is made in contemplation of such marriage. A Will revoked by marriage may afterwards be confirmed and made legal—such confirmation should be signed and witnessed by two credible witnesses.

7. Corrections.—Great care should be excercised at the time of signing a Will, the witnesses putting their initials opposite every word either interlined or erased with the pen. In no case should anything be scraped out or rubbed out—the surface of the paper should not be disturbed. If the Will consisted of several sheets, the Witness should initial each sheet.

6. Charitable Bequests.—In Ontario, all bequests for charitable purposes and for churches, etc., should be made at least six months before the death of the testator; if not, they can be set aside in the courts.

9. In Lieu of a Dower.—When a specific bequest is made to a wife, it is customary to state in it that it is in lieu of dower.

10. Form of Will.—

This is the last Will and Testament of me, Lewis Ludlow, of the Town of Orillia, in the County of Simcoe, and Province of Ontario, Gentleman, made this third day of December, in the year of our Lord, one thousand nine hundred and three.

I REVOKE all former Wills or other Testamentary Dispositions by me at any time heretofore made and declare this only to be and contain my last Will and Testament.

I DIRECT all my just debts, Funeral and Testamentary expenses to be paid and satisfied by my Executors hereinafter named as soon as conveniently may be after my decease.

I GIVE, DEVISE AND BEQUEATH all my Real and personal Property of which I may die possessed in the manner following, that is to say :

I GIVE DEVISE AND BEQUEATH to my son, Robert Ludlow, Lot No. 4 in the fifth Concession of the Township of Artemesia, in the County of Grey, and Province of Ontario, containing by admeasurement One Hundred acres, be the same more or less, subject to a certain legacy of Eight Hundred Dollars ($800) to be paid to my daughter, Louisa Ludlow, in eight equal annual instalments of One Hundred Dollars each without interest, the first of such payments to become due and payable one year after my decease. said Legacy to be considered the first charge on the said lot.

I GIVE, DEVISE AND BEQUEATH to my daughter Louisa Ludlow aforesaid, a legacy of Eight Hundred Dollars, hereinbefore provided for; also my Horse, Carriage, Cutter, Harness and Robes, and all other articles pertaining thereto.

I GIVE, DEVISE AND BEQUEATH to my beloved wife, Maria Jane Ludlow, Lot No. 12 on the West side of Division Street in the town of Orillia, County of Simcoe, Province of Ontario, containing by admeasurement One-quarter of an acre, be the same more or less, which is my present residence, together with all the appurtenances belonging thereto, with all my Household Stuff, Wearing Apparel, etc., of which I die possessed.

I GIVE,DEVISE AND BEQUEATH to the Congregation of the Methodist Church of Canada, worshipping on West Street in the said town of Orillia, the sum of One Thousand Dollars, and the receipt of the treasurer and pastor for the time being shall be sufficient discharge to my Executors for the same.

ALL the residue of my estate not hereinbefore disposed of, I give, devise and bequeath to my beloved wife, Maria Jane Ludlow.

AND I nominate and appoint Robert McDowall and David Williams, both of the Town of Orillia aforesaid, Gentlemen, to be Executors of this my last Will and Testament.

IN WITNESS whereof I have hereunto set my hand the day and year first above written. LEWIS LUDLOW.

SIGNED, published and declared by the said Lewis Ludlaw, the Testator, as and for his last Will and Testament in the presence of us, who both present together at the same time in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses.

J. W. MCGARVEY,
FRED BARBER,
Witnesses.

11. Provision against Litigation.—Many Wills are dragged into court by dissatisfied or coveteous friends and relatives for the purpose of getting a share in an estate contrary to the wish of the testator. Others who are not

remembered, will set up a claim that "the testator was not in his right mind, or he would have remembered me," and on this pretext, seek to break the Will. It is a very wise provision to put a clause in a Will, providing that any person who is the cause of any litigation or dispute in reference to the Will, should get nothing.

Form of Provision Preventing Litigation,

I further provide that should any person or persons mentioned in this Will, or any other person or persons not mentioned herein, commence, institute or prosecute any suit or action-at-law, either on behalf of the said parties mentioned or not mentioned, or on behalf of any other person or persons, for the purpose of changing any of the provisions of this Will, or for the purpose of securing to any such person or persons any benefit not expressly provided for herein, such person or persons shall not receive any such benefit whatever; and should such person or persons be granted any legacy or emolument herein, then such bequest shall be void and of none effect, and such legacy shall be divided equally among the remaining legatees.

12. The Signing and Attestation.—Special attention is called to the form of signature and attestation of the foregoing form of Will. Notice carefully:

[1] That the testator should sign in the presence of at least two witnesses.

[2] That they should sign in his presence and in presence of each other.

[3] That they should sign at his request, and both testator and witnesses should sign at the same time.

[4] The witnesses may be any person of sufficient age to understand what they are doing, so long as they are not receiving any direct benefit from the Will. They may or may not be executors.

13. Reading and Filing of a Will.—As soon as conveniently may be after the decease of the testator, the Will should be read in the presence of the interested parties, and then filed in the Surrogate Court for the County in which deceased resided. The Will should be accompanied by:—

(1) An affadavit of one or more of the witnesses as to the execution of the Will.

(2) A full inventory of all the assets and effects of the deceased, showing their estimated value duly verified by affadavit.

(3) An affadavit that such person or persons appointed by the Will as executors are willing to act as such, and that they will divide the estate according to Will.

(4) An affadavit of plight. This is usually made by a witness or some person who had the Will in custody, to the effect that the Will is now in the same condition as when signed by the testator.

The necessary forms for the above will be furnished by any clerk of the Surrogate Court.

14. Sundry Points.—

(1) Soldiers and seamen in actual service may bequeath their personal property by simply signing a written statement of how it is to be disposed of, without the usual formalities regarding attestation ;

(2) A legacy to a friend lapses, or is void, if he dies before the testator ;

(3) A legacy to the testator's child is not void, if he dies before the testator, if he has any living children. In such a case the property would go to the grandchildren.

15 Setting Aside a Will.—A Will may be set aside or "broken",for the following reasons, viz :

(1) If it was made under duress or undue influence.

(2) If the testator's mind was unsound at the time of making it.

16 Changing a Will.— If a Will has been made and does not suit the maker, it is better to make a new one and revoke the old one. If, however, the testator wishes to make a few minor changes, he may do so by adding a *Codicil* to his Will. There may be several codicils, so long as not inconsistent with one another. The codicil should very clearly state :—

(1) That it is a Codicil, and describe accurately the Will it belongs to, by giving date and other particulars of the Will.

(2) It should be signed and witnessed exactly as a Will is, using the word " codicil " where " Will " is used.

(3) If it gives a legacy to one who already has a legacy, it should state whether this is a second bequest or simply a confirmation of the first.

(4) If advances have been made during lifetime to a child on account of a legacy, such amounts should be carefully noted in the codicil, or endorsed on the Will itself, if no codicil is made ;

(5) It may make provision for the disposal of property acquired after a Will was made, or regulate the bequest in a Will, where some property mentioned in the Will was lost or disposed of.

(6) It should also confirm the parts of the Will that it does not change.

17. Form of Codicil.—

This is a Codicil to the last Will and Testament of me, Louis Ludlow, of Orillia, County of Simcoe, Province of Ontario, gentleman, which Will bears

date the first day of December, A. D. 1902, I revoke the bequest to my daughter, Louis Ludlow, of my horse, carriage, cutter, harness, robes and other articles belonging thereto, and give and bequeath them to my grandson, Thomas Ludlow, eldest son of Robert Ludlow, for his own absolute use and benefit forever.

In all other respects I do hereby confirm my said Will this tenth day of September, A.D. 1903. LEWIS LUDLOW.

Signed, published and declared by the said Lewis Ludlow, the testator as and for a codicil to his last Will and testament, in the presence of us who both present together, at the same time, in his presence, at his request and in the presence of each other, have hereunto subscribed our names as witnesses.

SAMUEL J. SOMERVILLE.
WILLARD B. STONE.
Witnesses.

CHAPTER 67.

EXECUTORS AND ADMINISTRATORS.

- EXECUTOR.
- INTESTATE.
- ADMINISTRATOR.
- WHO MAY BE AN EXECUTOR.
- WHO MAY BE AN ADMINISTRATOR.
- ADMINISTRATORS FOR INTESTATES.
- ADMINISTRATORS WITH A WILL ANNEXED.
- THE EXECUTOR'S TRUST.
- THE ADMINISTRATOR'S TRUST.
- LIABILITIES OF EXECUTORS, ETC.
- DUTIES OF EXECUTORS, ETC.
- PAYMENT OF LIABILITIES.

1. **Executor** (Feminine, Executrix), is a person appointed by the Will of a testator, to manage the estate of the said testator after his decease.

If one person only is named he is sole executor. Usually two or more persons are named. They attend to all the business of the estate such as payment of debts, sale of property, and division of property, according to the Will.

2. **An Intestate** is a person who dies without making any disposition of his property by Will.

3. **An Administrator** is a person appointed by the Surrogate Court, to manage and settle up the affairs of a deceased person. Administrators are of two kinds, viz :

(1) Administrators of estates of intestates;

(2) "Administrators with a Will Annexed."

Administrators and executors are sometimes called "personal representatives." They are special agents acting for the deceased person in the settlement of his business affairs.

4. Who May be Executors.—Any person who could be appointed to act as his agent during his lifetime, may be appointed by the testator to be his executor. He may be one of the heirs or legatees named in the Will, or any other person having the confidence of the testator. In Ontario, there are a number of Joint Stock Companies, known as "Trust Corporations," authorized to act as executors. They are incorporated for that purpose. They are in that business for the purpose of making profit. Idiots and lunatics, are perhaps the only persons who are incapable of being executors or administrators.

5. Who May be Administrators.—The Surrogate Court has considerable discretion in making the appointment ; usually, however, the nearest of kin is named. "Trust Corporations" are frequently appointed as administrators.

6. Administrators for Intestates draw their authority to act from the Surrogate Court, and take their instructions from the Court, and use their best endeavors to beneficially realize on the assets of the estate, pay the liabilities and expenses, and distribute the net amount of it according to law.

7. Administrators With a Will Annexed are such as are appointed by the Surrogate Court, to manage an estate and distribute it according to a Will. It is necessary to make such an appointment under the following circumstances, viz :—

(1) When the Testator does not appoint Executors in his Will ;
(2) When the Executors named in a Will refuse or neglect to act ;
(3) When the Executors die, or become incapable of acting as Executors before the death of the Testator.

8. The Executor's Trust.—An executor derives his powers from the testator through the Will. His appointment is evidence that the testator had implicit confidence in his ability and integrity, and no bonds are required from him for the faithful performance of his duties, unless the testator requires them by stating so in the Will. His trust is a matter of honor, except that he is required on entering on his duties, to make oath that he will discharge his duties faithfully, and distribute the estate in accordance with the desires of the testator expressed in the Will, so far as they are not contrary to law.

9. The Administrator's Trust.—An Administrator derives his authority from the Surrogate Court, and is required to give bonds for the faithful discharge of his duties in the settlement of the affairs of the estate, and the distribution of it according to law.

10. Liabilities of Executors, Etc.—In Chapter 7, sec. 3, sub-sec. 1, it is stated that :

"No action shall be brought whereby to charge an executor where an executor or an administrator promises to answer for damages out of his own estate, unless the promise is in writing, signed by him."

An executor or administrator should be careful that he does not bind himself unwittingly to pay the debt of an estate from his own property. In Chapter 30, sec. 4, sub-sec. 4, special directions were given regarding the signature of an agent. These are applicable here. The Executor or Administrator will become personally liable on the contracts and obligations, bills and notes of the estate, unless he gives notice to the payee by such words as "I promise to pay from the funds of the estate of A B, if they are sufficient."

II. Duties of Executors and Administrators may be summarized as follows :—

(1) To have the deceased decently buried ;
(2) To have Will admitted to Probate as outlined in sec. 13 of Chapter 67 ;
(3) To take possession of the property of the testator ;
(4) To collect all debts due the estate ;
(5) To pay funeral and testamentary expenses, and all liabilities of the deceased ;
(6) To distribute the estate, having regard to bequests of swecial articles, as well as the general distribution of the estate ;
[7] To render a full account to the Court, of the affairs and business of the estate, when it is wound up, or at different times during the winding up, if the time extends over a number of years.

The duties of an administrator with Will annexed, are the same as an executor ; and those of an administrator of an intestate, are much the same except that he distributes the estate according to law.

12, Payment of Liabilities.—The various claims against an estate rank as follows :—

[1] Charges of last sickness and funeral and testamentary expenses ;
[2] Expenses of winding up, including executors' or administrators' fees
[3] Debts due the Province ;
[4] Mortgages and Liens on property ;
[5] The ordinary unsecured creditors.

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FINIS.